

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# 75-6122

## United States Court of Appeals FOR THE SECOND CIRCUIT

Docket No. 75-6122

NATIONAL ORNAMENT & ELECTRIC LIGHT CHRISTMAS ASSOCIATION, INC., LECO ELECTRIC COMPANY, INC., NOMA-WORLD WIDE, INC., RADIANT GLASS FIBERS COMPANY, INC., GILBERT MANUFACTURING COMPANY, INC., DEPENDABLE ELECTRIC MFG. CO., INC., ACLA, INC., BRONSON IMPORTS, LTD., GEM ELECTRIC MANUFACTURING COMPANY, INC., LIBERTY BELL CHRISTMAS, MINAMI INTERNATIONAL CORPORATION, NATHAN SCHECTER & SONS, THE THOMAS COMPANY, INC., and ZELL ELECTRIC MFG. COMPANY, INC.,

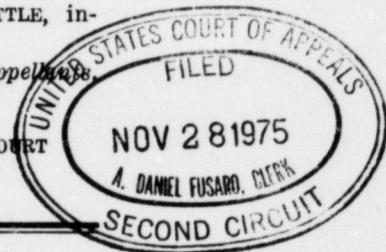
*Appellees,*

—against—

CONSUMER PRODUCT SAFETY COMMISSION, RICHARD O. SIMPSON, Chairman, LAWRENCE M. KUSHNER, BARBARA HACKMAN FRANKLIN, CONSTANCE E. NEWMAN, R. DAVID PITTLE, individually, and as members of the Commission,

*Appellants.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK



### JOINT APPENDIX

DAVID G. TRAGER,  
*United States Attorney,  
Eastern District of New York,  
225 Cadman Plaza East,  
Brooklyn, New York.*

ABERMAN, GREENE & LOCKER,  
540 Madison Avenue,  
New York, New York.

B

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DIST. OFFICE	DOCKET YR.	DOCKET NUMBER	FILING DATE MONTH DAY YEAR	J	N/S	ND OTHER	JUDGE NUMBER	JURY DEM.	DOCKET YR.	DOCKET NUMBER
207/1	75	1874	11 10 75	2	890	1	injunction	0712		

**APPEAL**

**WISHLER, J.**

PLAINTIFFS

NATIONAL ORNAMENT & ELECTRIC LIGHT, etc.

NATIONAL ORNAMENT & ELECTRIC LIGHT  
CHRISTMAS ASSOCIATION, INC.,  
LECO ELECTRIC COMPANY, INC.,  
NOMA-WORLD WIDE, INC., RADIANT  
GLASS FIBERS COMPANY, INC., GILBERT  
MANUFACTURING COMPANY, INC., DEPEND-  
ABLE ELECTRIC MFG. CO., INC.,  
ACIA, INC., BRONSON IMPORTS, LTD,  
GEM ELECTRIC MANUFACTURING COMPANY, INC.  
LIBERTY BELL CHRISTMAS, MINAMI INTER-  
NATIONAL CORPORATION, NATHAN SCHECTER  
& SONS, THE THOMAS COMPANY, INC., and  
ZELL ELECTRIC MFT. COMPANY, INC.,

DEFENDANTS

CONSUMER PRODUCT SAFETY COMM., etc.

CONSUMER PRODUCT SAFETY COMMISSION  
RICHARD O. SIMPSON, Chairman,  
LAWRENCE M. KUSHNER,  
BARBARA HACKMAN FRANKLIN,  
CONSTANCE E. NEWMAN,  
R. DAVID PITTLE, individually,  
and as members of the Commission,

CAUSE

28 U.S.C. § 1337

DECLARE DELEGATION OF AUTHORITY BY THE COMMISSION NULL & VOID

ATTORNEYS

For PLAINTIFFS:  
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540 Madison Avenue  
New York, N.Y. 10022  
(212) 832-7979

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DATE	RECEIPT NUMBER	CD NUMBER	CARD	DATE FILED	
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NATIONAL ORNAMENT & ELECTRIC LIGHT CHRISTMAS ASSOC, et al  
 VS  
 CONSUMER PRODUCT SAFETY COMMISSION, et al

NR. PROCEEDINGS

1-12-75	Complaint filed. Summons issued.	(1)
1-12-75	Letter from Richard P. Caro dtd 11-11-75 filed.	(2)
1-12-75	Def't's memorandum of law filed.	(3)
1-12-75	Pltiff's memorandum of law filed.	(4)
1-12-75	Stenographer's transcript dtd 11-10-75 filed.	(5)
1-12-75	By NICHLE, CH. J. - Memorandum of Decision and Order dtd 11-12-75 enjoining defts from distributing the booklet, etc., and denying motion for a preliminary injunction filed. (p/c mailed to attys)	(6)
1-12-75	Notice of appeal filed. Duplicate mailed to CoA & pltff.	(7)
1-12-75	Application and memorandum of law in support of application for stay of injunction pending appeal filed.	(8/9)
1-12-75	Unsigned order to show cause and temporary restraining order filed.	(10)
1-22-75	Above record certified & handed to Norman C. Barnett (for Richard Caro, Asst. U.S. Atty) for delivery to C of A.	



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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NATIONAL ORNAMENT & ELECTRIC  
LIGHT CHRISTMAS ASSOCIATION,  
et al.,

No. 75-C-1874

Plaintiffs,

Memorandum of Decision  
and Order

- against -

CONSUMER PRODUCT SAFETY  
COMMISSION, et al.,

Defendants.

-----x

November 12, 1975

MISHLER, CH. J.

This is an action to review the order of the United States Consumer Product Safety Commission (C.P.S.C.) pursuant to 5 U.S.C. §§702 and 704.<sup>/1</sup>

Plaintiffs applied for a temporary restraining order pending determination of an application for a preliminary injunction restraining enforcement of an order<sup>/2</sup> issued by defendant C.P.S.C.<sup>/3</sup> Defendants appeared and opposed the temporary

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<sup>/1</sup> The complaint bases jurisdiction on 28 U.S.C. §§1331(a) and 1337.

<sup>/2</sup> The order was issued on November 1, 1975; the application was postponed to November 10, 1975 at plaintiff's request and again postponed to Wednesday, November 13, 1975 at the suggestion of the court.

<sup>/3</sup> The order is contained in Appendix A to this memorandum of decision.



restraining order. The parties stipulated the following facts with the expectation of avoiding an evidentiary hearing on the motion for a preliminary injunction.

1. The order provides in pertinent part:

(a) Purpose

This order provides guidelines for conducting a Consumer Deputy Program on Christmas Decorative lights. This program will utilize the talents of consumers and consumer groups to supplement CPSC's inspection efforts. The activity in this program will involve surveys of retail outlets for Christmas decorative lights which have been identified as containing defects which may present substantial hazards as defined in Section 15(a) of the Consumer Product Safety Act.<sup>/4</sup>

(b) Background

This consumer deputy survey deals with alerting retailers to potential hazards of Christmas lights and to methods for checking their own stock for those hazards.<sup>/5</sup>

(c) Objectives

a. To ascertain whether retailers are aware of possible hazards with Christmas decorative lights in their stock.

b. To inform retailers of the potential hazards of Christmas decorative lights and of methods for checking lights in stock for these hazards.

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<sup>/4</sup> C.P.S.C. Order 9010.83, ¶1.

<sup>/5</sup> C.P.S.C. Order 9010.83, ¶6.

c. To provide feedback as to the types and volume of Christmas decorative lights seen at the retail level as compared to those identified by the field survey of manufacturers.

d. To make the public aware of potential hazards of certain Christmas decorative lights through publicity of this program.<sup>/6</sup>

(d) Operations

This Consumer Deputy Program for a retail survey related to Christmas decorative lights will begin November 1, 1975, and end January 15, 1976.<sup>/7</sup>

(e) Deputy's Authority

Impress upon the consumer volunteers that they have no authority beyond that of any consumer. The consumer deputy must not describe him/herself as an employee of CPSC (see Appendix 2). Volunteers should explain that they are checking for Christmas decorative lights and are explaining the potential hazards of decorative lights and will demonstrate methods for checking lights in stock for hazards (see Appendix 3).<sup>/8</sup>

(f) Surveys

Reference is made to paragraph 11 and appendix 4 of the order which discuss the manner of making surveys. The pertinent portions refer to the method of informing and instructing retail stores of C.P.S.C.'s purpose, and suggest through the illustrate booklet<sup>/9</sup> various tests to be performed. This portion further instructs

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<sup>/6</sup> C.P.S.C. Order 9010.83, ¶7.

<sup>/7</sup> C.P.S.C. Order 9010.83, ¶8.

<sup>/8</sup> C.P.S.C. Order 9010.83, ¶10.

<sup>/9</sup> See below, ¶2 of the stipulated facts.



deputies on the manner of surveying inventories of Christmas lights. The order cautions: "The deputies are not to examine lights on the shelves for defects."/<sup>10</sup>

(g) Publicity

If questions should arise concerning names of stores carrying violative products . . . inform the questioner that a Freedom of Information request must be made through the Office of the Secretary.<sup>/11</sup>

2. The booklet entitled "What Can You Do Now and How Should You Do It? A guide for retailers for evaluating the comparative safety of Christmas Tree Lights"<sup>/12</sup>, is to be distributed to the retailers by the consumer deputies. The booklet provides the retailer with five simple screening methods of determining defective parts of Christmas lights. Nos. 1 and 4 are visual examinations to discover defects in sockets and exposed bulb contact wires. The other methods combine visual inspections and added suggestions for tests to determine possible concealed defects.

3. Subsequent to the argument of the motion, C.P.S.C. submitted a letter defining and modifying the manner in which the deputies will be directed to perform their duties.<sup>/13</sup>

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<sup>/10</sup> C.P.S.C. Order 9010.83, ¶11(c).

<sup>/11</sup> C.P.S.C. Order 9010.83, ¶13.

<sup>/12</sup> The booklet is contained in Appendix B to this memorandum of decision.

<sup>/13</sup> The letter is contained in Appendix C to this memorandum of decision.

The basis for conducting the informational program contemplated is found in 15 U.S.C. §2054.<sup>/14</sup>

The heart of plaintiffs' claim is that the program goes beyond information gathering and provides tests to determine defects in Christmas lights. They argue that to the extent it provides standards and tests for determining defective lights, the C.P.S.C. ventures beyond its statutory authority. 15 U.S.C. §§2056 and 2058. These sections set out detailed procedures for the development and promulgation of consumer product safety standards by the C.P.S.C.; they require identification of product risks,<sup>/15</sup> publication of the intention to

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<sup>/14</sup> 15 U.S.C. §2054(b) states:

The Commission may --

(1) conduct research, studies, and investigations on the safety of consumer products and on improving the safety of such products;

(2) test consumer products and develop product safety test methods and testing devices; and

(3) offer training in product safety investigation and test methods, and assist public and private organizations, administratively and technically, in the development of safety standards and test methods.

<sup>/15</sup> 15 U.S.C. §§2056(b)(1); 2058(b).



develop a safety standard<sup>/15</sup> and of the standard when adopted,<sup>/17</sup>  
 an opportunity for interested persons to be heard,<sup>/18</sup> specific  
 findings of fact,<sup>/19</sup> and prospective application only of any  
 standard adopted.<sup>/20</sup>

The test for the granting or denial of injunctive relief on behalf or against the Government differs significantly from that for private litigants. A showing of irreparable harm alone is not enough where the public interest is adversely affected by the grant of injunctive relief. Yakus v. United States, 321 U.S. 414, 440, 64 S.Ct. 660, 675 (S.Ct. 1944); Villani v. New York Stock Exchange, Inc., 348 F.Supp. 1185, 1193 (S.D.N.Y. 1972), aff'd, 489 F.2d 1 (2d Cir. 1973).

It would not be in the public interest to discourage the C.P.S.C. from performing its statutory duty. However, the court finds that to the extent that the booklet "What Can You

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<sup>/16</sup> 15 U.S.C. §2056(b)(2).

<sup>/17</sup> 15 U.S.C. §2058(a)(2).

<sup>/18</sup> 15 U.S.C. §§2056(b)(4); 2058(a)(2).

<sup>/19</sup> 15 U.S.C. §2058(c)(1) and (2).

<sup>/20</sup> 15 U.S.C. §2058(d)(1).

To Now and How Should You Do It?" suggests tests to discover defects that are not apparent on visual examination, it exceeds the Commission's statutory authority, since the prescribed procedures for developing and adopting standards are not followed. Of the five screening methods contained in the booklet, the following must be excised:

No. 2, Loose Add-On Connectors

If the insert does not appear to be loose, just to be sure, give the prongs or blades on the connector a substantial push against a hard surface to simulate the effect used in plugging in the set or, with caution, plug the set into a non-live current (like an extension cord) five times. The blade should not become loosened or cause the insert to push out the other end.

No. 3, Exposed Bare Wires

If none is visible, at each connector and socket grasp the wire about one inch from socket or connector. Rotate wire in a crank-like fashion three turns to the right then three to the left. The wire insulation should not have moved to expose bare wires. The wire should not have loosened at the connector or socket. This test simulates ordinary handling of lights while unpacking or decorating.

No. 5, Exposed Socket Contact

Insert and remove the bulb several times to see if this occurs. If so, an electrical shock hazard has been exposed.

The illustrations in the book which demonstrate the above



It is hereby

ORDERED that the defendants, their servants, agents and employees are enjoined from distributing the booklet containing the portions and illustrations aforementioned, and it is further

ORDERED that the motion for a preliminary injunction <sup>/21</sup> is in all other respects denied.

  
U. S. D. J.

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/21 Defendants may distribute the aforementioned booklet if the above cited portions are excised. The motion for a temporary restraining order is denied as moot.

A 11



Order

9010.83

CONSUMER DEPUTY PROGRAM  
RETAIL SURVEY OF CHRISTMAS DECORATIVE LIGHTS

1. PURPOSE. This order provides guidelines for conducting a Consumer Deputy Program on Christmas Decorative lights. This program will utilize the talents of consumers and consumer groups to supplement CPSC's inspection efforts. The activity in this program will involve surveys of retail outlets for Christmas decorative lights which have been identified as containing defects which may present substantial hazards as defined in Section 15(a) of the Consumer Product Safety Act.
2. SCOPE. The procedures in this order are for the use of Area Office personnel who have the responsibility of conducting Consumer Deputy Programs and for those personnel who supervise these programs.
3. EFFECTIVE DATE. The program covered by this directive begins on November 1, 1975.
4. REFERENCES. The following items are reference materials for this order.
  - a. Order 9010.80, Utilization of Volunteers in Commission Surveillance Activities (Consumer Deputy Program).
  - b. Order 9020.91, Christmas Decorative Light Survey.
  - c. Order 9010.40, Substantial Product Hazard
  - d. Consumer Product Safety Act (Section 15).
5. FORMS. Supplies of the Consumer Deputy Report Forms will be provided by the Office of Field Coordination.
6. BACKGROUND. Each year during the Christmas Season, numerous reports of electrical shock, and fire or potential fire incidents associated with Christmas tree lights are

Initiated by: OGC

CPSC Form 100



## EVEN PAGE - DIRECTIVES TYPING GUIDE

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received. Last year, such reports resulted in the recall of certain product styles. Manufacturers/importers/retailers have been notified of means for identifying hazardous elements; have been urged to inspect existing stock and have been notified that the Commission would survey the marketplace. The Office of Product Defect Identification has initiated a survey in the Area Offices to identify and check available sources of Christmas decorative lights. The Bureau of Engineering Sciences has tested numerous samples of lights and OPDI has notified manufacturers and importers of the hazards and of their obligations under Section 15 of the Consumer Product Safety Act. This consumer deputy survey deals with alerting retailers to potential hazards of Christmas lights and to methods for checking their own stock for those hazards.

7. OBJECTIVES.

a. To ascertain whether retailers are aware of possible hazards with Christmas decorative lights in their stock.

b. To inform retailers of the potential hazards of Christmas decorative lights and of methods for checking lights in stock for these hazards.

c. To provide feedback as to the types and volume of Christmas decorative lights seen at the retail level as compared to those identified by the field survey of manufacturers.

d. To make the public aware of potential hazards of certain Christmas decorative lights through publicity of this program.

8. OPERATIONS.

a. This Consumer Deputy Program for a retail survey related to Christmas decorative lights will begin November 1, 1975, and end January 15, 1976.

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b. Implementation and Administration

(1) Coordination of the program at the headquarters level will be the responsibility of the Office of Field Coordination. The Office of Product Defect Identification (OPDI) will give support as needed.

(2) Area Office Directors have the responsibility for the program at the Area Office level.

(3) All volunteers or volunteer groups must be willing to work within program guidelines and limitations as specified by CPSC (see Order 9010.80).

9. TRAINING. Train each person interested in participating in the program. No person will be considered as a consumer deputy without the complete training course as outlined in Appendix #1. OPDI will provide guidance for training, when necessary.

10. DEPUTY'S AUTHORITY. Impress upon the consumer volunteers that they have no authority beyond that of any consumer. The consumer deputy must not describe him/herself as an employee of CPSC (see Appendix 2). Volunteers should explain that they are checking for Christmas decorative lights and are explaining the potential hazards of decorative lights and will demonstrate methods for checking lights in stock for hazards (see Appendix 3).

11. SURVEYS. (See Appendix 4 for Suggested Survey Procedures).

a. Instruct consumer deputies to seek stores which carry Christmas decorative lights, i.e. department stores, specialty stores, hardware stores, supermarkets, variety stores, etc. Supply each deputy with an illustrated booklet, "What Can You Do Now and How Should You Do It?" (to be supplied by OFC) demonstrating the methods for checking lights for hazards and report forms (see Appendix 5). Also supply a set of Christmas lights which have had the hazards exposed as described in (b) below.

b. Instruct deputies to offer to demonstrate the hazards illustrated in the booklet to the store manager using a set of lights provided each deputy by CPSC for this purpose.



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9010.83

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Par 11

c. Instruct the deputy that after the demonstration, to survey the display(s) of Christmas decorative lights are to be made. Record the complete labeling of each brand or style of light being offered for sale (see example in Appendix 4). Include if available:

- (1) The manufacturer/importer's name and address.
- (2) The descriptive name of the product.
- (3) Code and/or style number.
- (4) Catalog number.
- (5) Place of manufacture.
- (6) Type of light (miniature, regular, other, etc.)
- (7) Suggested use - indoor, outdoor, both.

Note: The deputies are not to examine the lights on the shelves for defects.

d. Instruct deputies to survey only stock on the shelves. Deputies will not open packages on store shelves.

e. When deputies have completed the survey in a store or department an exit interview should be made thanking the manager for his/her time. The deputy should ask the manager if he/she plans to inspect the stock. If the answer is yes, the deputy may also suggest that in the interest of public safety that the lights which appear to have hazards be removed from the shelves.

f. The manager should then be notified that the information on the survey will be turned over to the Consumer Product Safety Commission and that an official follow-up visit may result.

12. FUNDING. Funds for purchasing demonstration light sets will be provided by OFC when money for contracting is allotted. Due to the expense that could ensue, the number of deputies should be limited to no more than forty per Area Office. The maximum amount of contract funds to be allotted will be \$1,000 per Area Office.

9010.83

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13. PUBLICITY. Issue a press release at the inception of the Consumer Deputy Program to identify the participating groups and explain the purposes of the program. A release on the national level will be made by the Office of Public Affairs at the beginning of the program. A sample press release developed by OPA is provided (see Appendix 6). If questions should arise concerning names of stores carrying violative products, the number of products in the store or other specific or proprietary information, inform the questioner that a Freedom of Information request must be made through the Office of the Secretary.

14. FOLLOW-UP. Follow-up activity will be at the direction of headquarters based on the Area Office's final reports. Lights surveyed will be compared by OFC with those identified by OPDI as having possible defects which could create a risk of injury. Samples will be collected at OPDI's discretion.

15. REPORT FORMS.

a. Instruct consumer deputies to prepare a report form for each store surveyed (Appendix 5).

b. Instruct consumer deputies to provide the following information on all reports:

(1) Name and address (including zip code) of the retail outlet; whether store was a member of a chain or privately owned.

(2) Name and title of person interviewed; store department; date.

(3) Whether the manager allowed the hazard identification demonstration to be given.

(4) List all the different brands on display, along with identification as described in section 6 of the Suggested Procedure for Conducting a Retail Survey (see Appendix 4).

(5) Record whether the manager had checked



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his stock for potential hazards prior to the deputy's visit. If not, does he/she plan to do so now.

(6) Comments. If a manager does not allow the survey to be conducted and/or the demonstration to be given, note here giving any reasons.

16. FINAL REPORT. Submit a final report to the Office of Field Coordination, Attention: Catherine Downs, by close of business, January 30, 1976. Include the following in the report:

- a. Number of consumer deputies trained.
- b. Number of consumer deputies who reported.
- c. Name of consumer groups participating.
- d. Number of stores visited. Breakdown into chain versus privately owned.
- e. Number of kinds of lights surveyed (total number of different brands, not individual units or repeated brands).
- f. Name and address of stores which refused to allow a survey and/or demonstration and reason.
- g. Name of stores which had checked lights for hazards prior to deputies visit.
- h. Number of stores which agreed to check lights as a result of consumer deputy.
- i. Narrative should include any problems and/or successes in the following areas:
  - (1) Recruiting
  - (2) Training
  - (3) Complaints from retailers

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(4) Adequacy of report form and illustrated booklet.

(5) Comments on overall program.

j. State involvement should be reported under a separate heading. Please list as follows:

(1) State agency involved.

(2) Number of stores visited.

(3) Number and name of brands of Christmas decorative lights identified.

(4) Names of stores which checked lights prior to visit.

(5) Number of stores which agreed to check lights.



## EVEN PAGE - DIRECTIVES TYPING GUIDE

Class No.  
REF. 101

## APPENDIX 1. SUGGESTED TRAINING COURSE OUTLINE

1. CPSC Overview
  - Mission
  - Background
  - Current Laws
2. Why We Need You
  - Number of Retail Stores vs. Number of Inspectors
  - Past Experience with Consumer Deputy Programs
3. Why Decorative Christmas Lights
  - Highly Seasonal
  - Environment - Exposure to Children, Pine Trees, Closed Homes
  - Electrical Shock
  - Fire Hazard
  - Many Different Brands and Manufacturers
  - (use examples for booklet or own experience)
4. How To Conduct a Survey
  - Introduction
  - Letter of Identification
  - How to Give a Demonstration (follow booklet step-by-step)
  - Report Forms (procedure for completing)
  - Exit Interview to Manager
  - Return of Reports Promptly
5. Logistics
  - Divide Geographical Area
  - What Stores to Survey
  - Where to Look in Store
6. Wrap-Up

## APPENDIX 2. SUGGESTED INTRODUCTION

Good Morning/Good Afternoon/Good Evening. My name is \_\_\_\_\_ . I am a Consumer Deputy and I wish to conduct a survey of the decorative Christmas light supply in your store and to give you a demonstration for easily checking your Christmas light stock for possible hazards.

This survey is being conducted in local stores in cooperation with the U.S. Consumer Product Safety Commission. As this letter states (hand the individual the letter), I am not an employee of this agency and I do not have regulatory authority. I am a volunteer consumer interested in reducing the possibility of consumers being injured or their being subjected to an unnecessary hazard.

I would appreciate your cooperation in permitting me to survey your department and to give the demonstration on how to examine Christmas decorative lights for hazards.



FORM 3000 - CHRISTMAS LIGHTING HAZARD

## APPENDIX 3. LETTER OF INTRODUCTION

Dear Manager:

The individual presenting this letter is a consumer volunteer participating with the U.S. Consumer Product Safety Commission (CPSC) in a program to help make retailers aware of the potential hazards of Christmas decorative lights. The individual will identify him/herself and the organization represented. Under the Consumer Product Safety Act, CPSC has the authority to act against those products which present possible hazards. While there is no currently enforced Christmas light regulation, CPSC studies have shown that indeed, a hazard potential does exist. Manufacturers of lights which have been identified as potentially hazardous have been notified and advised of their responsibilities under the Consumer Product Safety Act.

Under this program volunteers are visiting retail establishments to help advise retailers of potential hazards by demonstrating an easy checking method. The volunteer would also like to check the Christmas light display and record the lights available in your store by brand. This information will help CPSC identify all manufacturers and/or importers of Christmas decorative lights.

The volunteer is not a CPSC employee and has no legal authority to demand or require that you take any specific action in this matter or to conduct any official inspection or investigation. The volunteer is acting entirely as a citizen volunteer in an attempt to increase consumer protection without resorting to legal enforcement action.

We believe that this program represents a means by which local consumers can work with local businesses to provide increased public protection and safety, and we, therefore, request your cooperation in allowing the volunteer to give the demonstration and to make

APPENDIX 3 - Continued

the survey. If you should have any questions about this project, please do not hesitate to telephone us.

Sincerely,

Area Office Director



EVEN PAGE - DIRECTOR'S OFFICE

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APPENDIX 4. SUGGESTED PROCEDURE FOR  
CONDUCTING A CONSUMER DEPUTY PROGRAM ON DECORATIVE  
CHRISTMAS LIGHTS

Before choosing the stores to survey, be sure to coordinate with other members of your groups to insure against "repeat" visits to any one store.

1. Upon entering the store locate the store or department manager. Introduce yourself giving the manager the letter of identification (see attached letter of introduction).
2. Ask permission to give the demonstration and to conduct the survey. If the manager refuses, thank him/her and leave the store noting on the report any reason that may have been given for the refusal. Offer to leave a copy of the booklet.
3. When permission is granted, complete the top of the report form including the store managers name.
4. Using the demonstration light set provided, show the manager step by step the hazards identified in the booklet. Explain to the manager that you are not a trained electrician and he/she is not expected to be either. The hazards identified are only visible checks which can easily be made. The hazards are:
  - a. Cracked Sockets. Danger - Shock and Burns to Fingers.
  - b. Add-on Connectors which Fall Apart. Danger --Electrical Shock and Tree Fire.
  - c. Exposed Bare Wires. Danger - Shock Hazard.
  - d. Exposed Contact or Electrode Wires from Base of Bulb. Shock Hazard.
  - e. When bulb is removed from socket, socket contact wire shoves through from bottom to top of socket exposing bare wire. Shock hazard.

5. Give the manager a copy of Fact Sheet No. 32, Section 15 CPSA along with the booklet.

6. After the demonstration, go to the section or department displaying Christmas decorative lights. Examine the lights on display writing down the descriptive labelling. Include the items as listed in the following example:

a. Importer and/or Manufacturer: (Name and Address):

C and C Manufacturers, Inc.  
10 West O Street  
Big City, State 00200

- b. Name of Product: "10 Lite Angel Tree Top"  
c. Code and/or Style Number: "Item 100"  
d. Catalog Number: "CAT. NO. 1745"  
e. Place of Manufacturing: "Made in Taiwan"  
f. Number of Lights: "10"  
g. Type of Light: "Miniature"  
h. Suggested Use: "Indoor"

Not all boxes of lights will include all of the above.

7. When all lights have been listed on the report form (checked implies tested), return to the manager. Ask if he/she plans to check the lights in stock or if the lights had been checked prior to the deputy's visit.

8. If a check is to be made, suggest to the manager that in the interest of public safety, he/she remove any lights from display which appear to present hazards.

9. Note what action the manager agrees to take, if any.



FROM: [REDACTED] TO: [REDACTED]

[REDACTED]

[REDACTED]

10. Thank the manager for her/his time before leaving the store.

11. After the survey, complete all necessary information on the report form and within one week after survey mail the form to the Area Office (more than one at a time, if possible) in the envelope provided by your local Area Office.

## APPENDIX 5

CONSUMER DEPUTY PROGRAM  
CHRISTMAS DECORATIVE LIGHTS

Date:

Area Office:

Consumer Deputy's Name:		Organization:	
Store Name and Address:	Privately Owned	Person Interviewed & Title:	
	Chain		

1. Was the hazard identification demonstration given? Yes \_\_\_\_ No \_\_\_\_

2. List all different brands on display

Importer/ Manufacturer	Address	Product Name	Code/ Style No.	Cat. No.	Place Manuf.	Type	Use

3. Had the manager checked the Christmas decorative lights for potential hazards prior to the deputy's visit? Yes \_\_\_\_ No \_\_\_\_

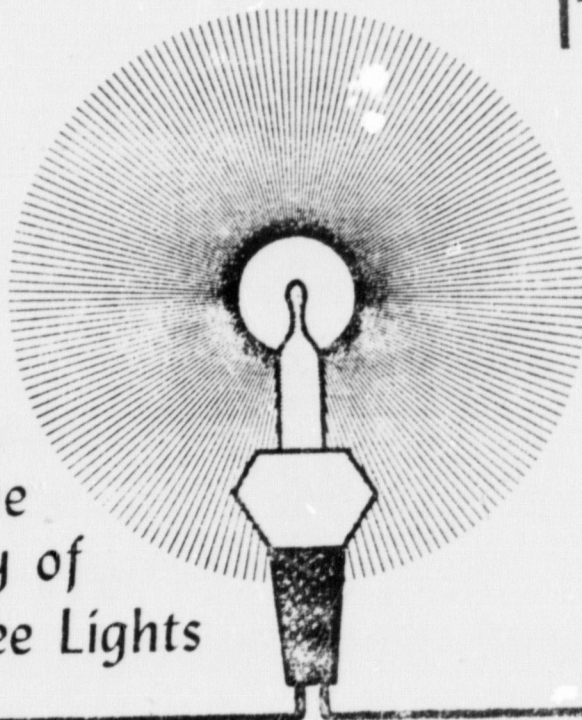
4. Did the manager agree to make a check now? Yes \_\_\_\_ No \_\_\_\_

5. Comments:



# WHAT CAN YOU DO NOW AND HOW SHOULD YOU DO IT?

A Guide for Retailers  
for Evaluating the  
Comparative Safety of  
Christmas Tree Lights



Based on remarks given by John K. O'Connor, Deputy Director,  
Office of Product Defect Identification, CPSC,  
before an open meeting of Retailers in Chicago, Illinois,  
March 20, 1975.

**RESPONSIBILITY:** Under Section 15 of the Consumer Product Safety Act, retailers, distributors and manufacturers (importers) are required to report to the U.S. Consumer Product Safety Commission situations where products could create substantial injury exposure to consumers.

**PURPOSE:** The remarks in this book were consolidated for retailers to help provide an easy, quick method to check the decorative Christmas lights in their stock. The methods described here require no electrical background, only an interest in the safety of the product. The hazards described are not, of course, a total listing of what could possibly occur but represent the most commonly identified hazard areas.

**NEED:** Christmas tree light sets are a somewhat unique product in that the product is highly seasonal, highly competitive, highly charged with energy and used in an environment (evergreen trees, children, closed-up homes, etc.) that is potentially dangerous.

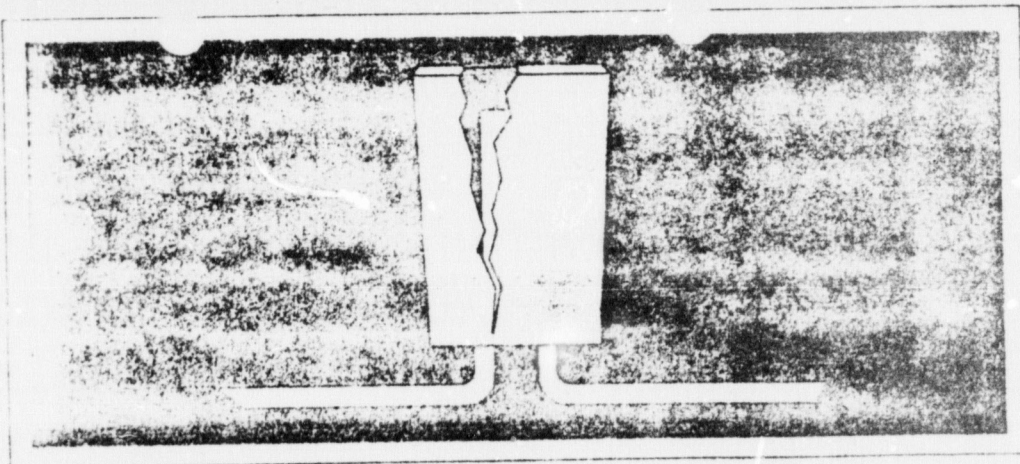
In a period of a few weeks during the 1974 Christmas season, CPSC became aware of a variety of problems with decorative lights.

- A report from a Western city fire department identified a Christmas light set with a possible shock and fire hazard. The consumer involved received a shock and burnt fingers from cracked sockets while installing bulbs.
- A consumer complaint from Minnesota triggered another investigation which resulted in a national recall of certain miniature light sets due to faulty add-on end connectors.
- Another fire marshal reported scorching and burning trees as a result of over heating bubble lights.
- A retailer in New England reported a voluntary recall program on lights he was selling because of three fires that had been reported to him.
- A fire marshal in Georgia reported a string of miniature lights with clear plastic star ornamentations around the bulbs. The ornamentation was melting on some of the bulbs.
- A consumer in New York State reported a set of lights with very thin plastic covering each socket. The socket coverings were split, exposing bare socket metal.

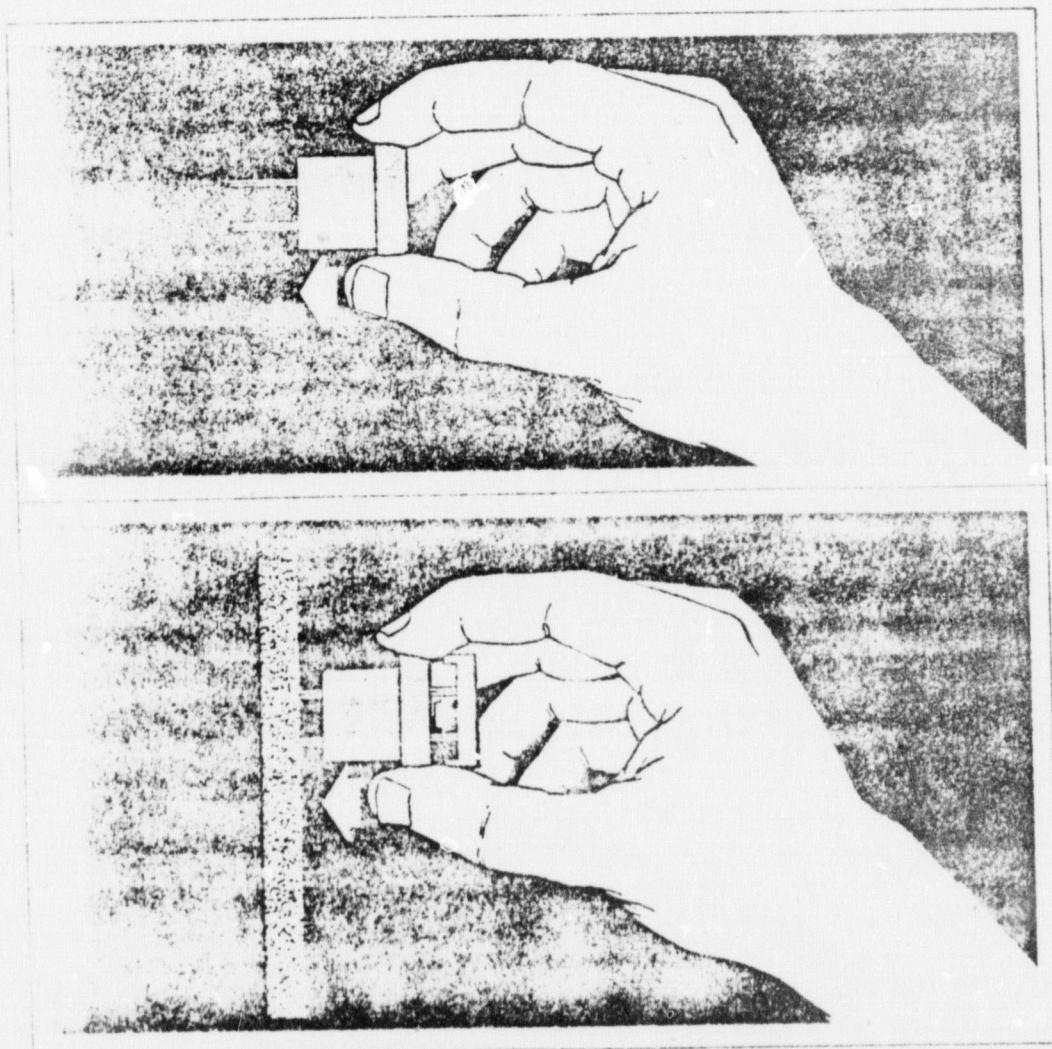
**SCREENING:** To help eliminate the most common or obvious problems, CPSC recommends that retailers take the time to evaluate the lights in stock. The five screening methods listed on the following pages will serve as a guide.

**No. 1, Cracked Sockets:** Check light strings for sockets which are cracked or broken. This potential hazard can be worsened by installation or changing of bulbs. Remove and replace several bulbs and observe any cracks or splits that may develop in the socket.

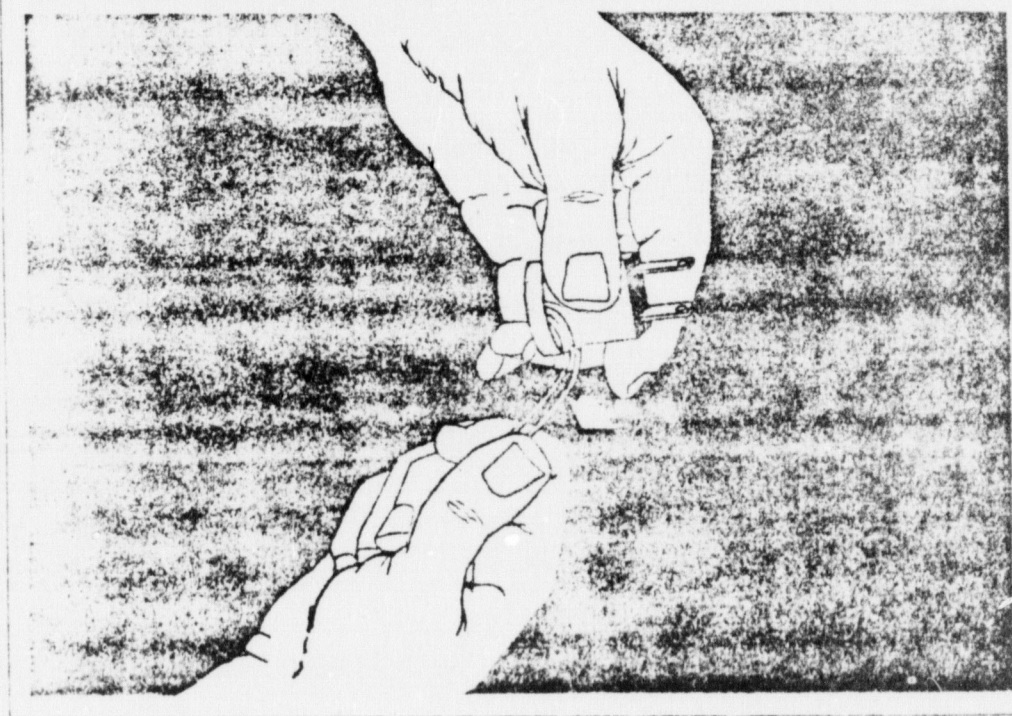
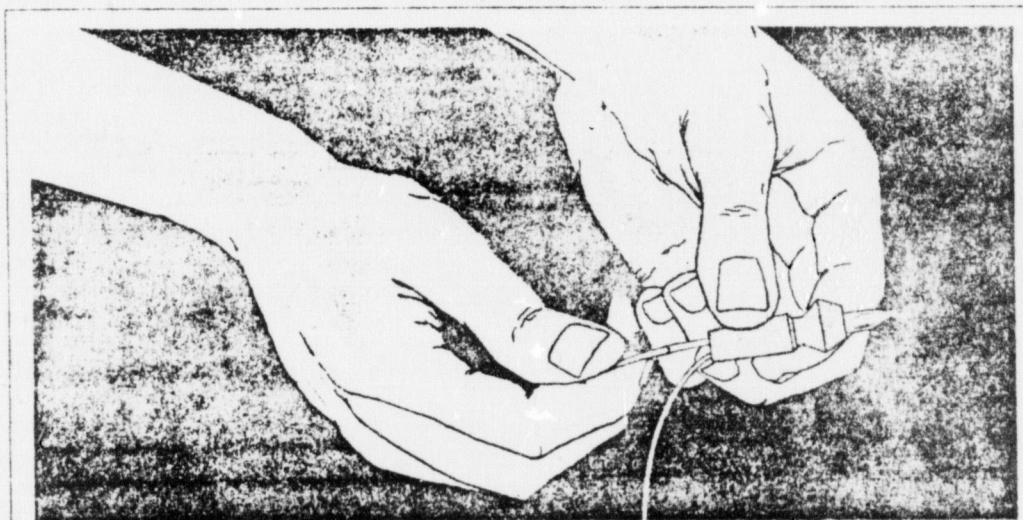




No. 2, Loose Add-On Connectors: Check the end of the plug or connector for loose or missing 'add-on' insert used for plugging in additional lights. If loose, insert can fall out exposing bare wires. If the insert does not appear to be loose, just to be sure, give the prongs or blades on the connector a substantial push against a hard surface to simulate the effort used in plugging in the set or, with caution, plug the set into a non-live current (like an extension cord) five times. The blade should not become loosened or cause the insert to push out the other end.

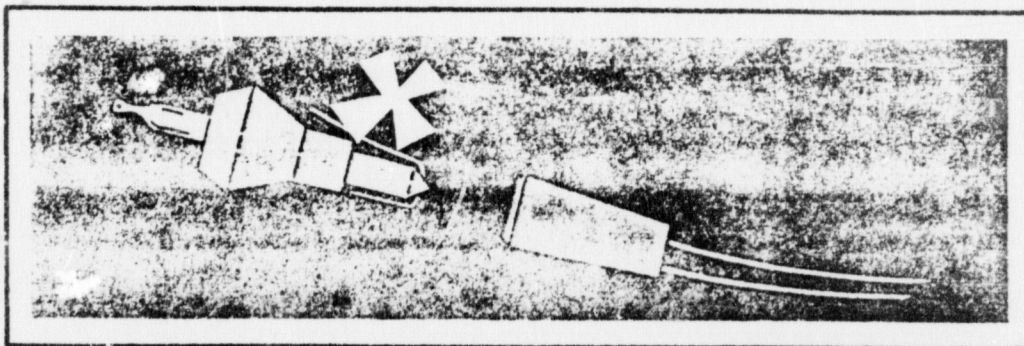


No. 3, Exposed Bare Wires: Check for exposed bare wires where insulation has pulled back. If none is visible, at each connector and socket grasp the wire about one inch from socket or connector. Rotate wire in a crank-like fashion three turns to the right then three to the left. The wire insulation should not have moved to expose bare wires. The wire should not have loosened at the connector or socket. This test simulates ordinary handling of lights while unpacking or decorating.

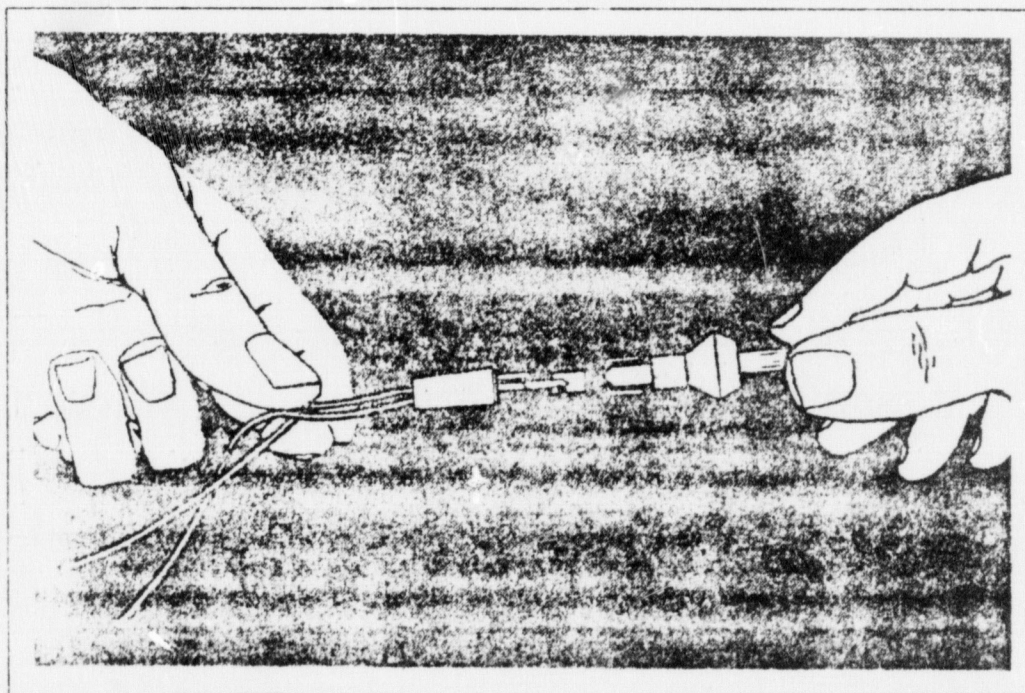




No. 4, Exposed Bulb Contact Wire: Observe around the socket with bulb in place for thin hair-like wires exposed. These wires may be the improperly trimmed extended filament wires which serve as the contact between the bulb and the socket and can present a shock hazard. Remove the bulb and replace with acceptable one.



No. 5, Exposed Socket Contact: Remove bulb from socket. Does the insulated wire at the point of entry to the socket become loose and slide through the socket extending beyond the top of the socket. Insert and remove the bulb several times to see if this occurs. If so, an electrical shock hazard has been exposed.



Many of the potential hazards described can be applied to other decorative light products such as plaques and tree top ornaments. Check for loose or exposed wires, loose connector blades and insert add-ons and for cracks or splits in casings which may expose bare wires.

These screening procedures will not uncover all possible hazards but will provide a method for identifying the most common potential hazards seen by consumers.



To report a product hazard or product-related injury, write to the  
U. S. Consumer Product Safety Commission  
Washington, D. C. 20207

In the continental United States, call the toll-free safety hot-line  
800-638-2666

Maryland residents only, call  
800-492-2937



## Memorandum

SPECIAL DIRECTIVE

A 32

TO See Distribution Below

DATE

FROM Richard O. Simpson, Chairman

NOTE: THIS DIRECTIVE IS TO RECEIVE  
THE IMMEDIATE ATTENTION OF  
ALL COMMISSION PERSONNEL  
LISTED BELOW

SUBJECT Consumer Deputy Program  
Retail Survey of Christmas Decorative Lights

The Consumer Deputy Christmas decorative lights program was initially scheduled to become fully effective on November 10, 1975. On November 7, 1975 the Commission was advised that the National Ornament and Electric Light Christmas Association, Inc. (NOEL) and several of its member companies would seek an injunction against the implementation of the program. The full implementation date was extended for one day to permit a ruling on the request for injunction. On November 10, 1975 a hearing was held before the Honorable Jacob Mishler, Chief United States District Judge for the Eastern District of New York on NOEL'S request for injunction. In order to allow the Court time to review the pleadings, I authorized the implementation of the program to be extended for 24 hours through November 11, 1975. The Court now has the matter under advisement and has not as of the issuance of this memorandum issued its decision. You will be notified of the decision as soon as we are advised of a decision.

At the hearing the Court expressed some reservations regarding:

1. the clarity of the instructions given to the Deputies;
2. the possibility that Deputies may not follow their instructions and/or exceed their authority;
3. the extent of supervision over the Deputies;
4. the possibility that retailers may misconstrue the purpose and intent of the Deputy's visit;
5. the possibility that retailers may misconstrue the nature and extent of information concerning the potential defects.

In view of these concerns I have issued a revised letter of introduction (attached hereto) and am issuing the following additional instructions which will supercede any instructions you have received to date which are in any manner in conflict with or inconsistent with prior instructions.

1. All Deputies shall act strictly in accordance with instructions given and shall not act independently to give any advice or suggestion.
2. No Deputy shall state or in any manner imply that he or she is employed by or holds any authority whatsoever to require the retailer to take any action.
3. No Deputy shall in any manner advise a retailer to remove any item from inventory for any reason.
4. No Deputy shall make any statement which would tend to identify any specific brand name product or the manufacturer, private labeler, distributor or retailer of any product.
5. No Deputy shall take any steps to perform any tests or inspection of products in the retailer's inventory. See Order No. 9010.83 Paragraph 11(c)7 and 11(d).
6. Each Deputy is to give a copy of the attached revised introduction letter to each retailer visited and is to request that the retailer review the letter.
7. All Supervisory Personnel shall take the maximum steps possible to insure that the Deputies are acting in accordance with the directives issued.
8. Each Consumer Deputy shall personally receive a copy of this directive prior to any Commission authorized field visits.

I wish to impress upon all concerned the importance of carefully complying with the Commission's directives in this matter. The continued existence of the Commission's informational activities and the Consumer Deputy Program has been questioned in the pending law suit. It is my belief that the program has been of great assistance to the Commission, in carrying out its responsibilities. It also represents a unique and valuable experiment of citizen participation in Government action, which I believe is both healthy and fruitful. Finally, I am concerned that any action which would tend to restrict our informational activities would have debilitating effects on our entire product safety effort.

Distribution:

Area Office Directors  
Consumer Deputy Supervisors  
All Commission Personnel responsible for Consumer Deputy Program  
All Consumer Deputies



A 34

U.S. CONSUMER PRODUCT SAFETY COMMISSION  
New York Area Office  
6 World Trade Center, Vesey Street  
New York, New York 10048

LETTER OF INTRODUCTION

Dear Manager:

The individual presenting this letter is a consumer volunteer participating with the U.S. Consumer Product Safety Commission (CPSC) in a program to help make retailers aware of the potential hazards of Christmas decorative lights. The individual will identify him/herself and the organization represented. Under the Consumer Product Safety Act, CPSC has the authority to act against those products which present possible hazards. While there is no currently enforced Christmas light regulation, CPSC studies have shown that indeed, a hazard potential does exist. Manufacturers of lights which have been identified as potentially hazardous have been notified and advised of their responsibilities under the Consumer Product Safety Act.

Under this program volunteers are visiting retail establishments to help advise retailers of potential hazards by demonstrating an easy checking method. The volunteers will also be distributing literature which will assist you in determining defects and advising you of certain reporting requirements of the CPSA. The volunteer would also like to view your Christmas light display and record the lights available in your store by brand. This information will help CPSC identify all manufacturers and/or importers of Christmas decorative lights.

The volunteer is not a CPSC employee and has no legal authority to demand or require that you take any specific action in this matter or to conduct any official inspection or investigation. The volunteer is acting entirely as a citizen volunteer in an attempt to promote product safety.

The Commission's purpose in conducting this program is purely informational to assist it in promoting product safety

by sharing its knowledge of certain potential defects which have been found in Christmas tree lights through past Commission surveys. The Commission has not, as of this date, undertaken any regulatory or legal action against any manufacturer, distributor, importer or private labeler of Christmas tree lights other than to inform them of the potential hazards which have been identified and to request that they take voluntary action to insure that their products do not contain any such defects.

Although we hope that you will cooperate with us in conducting this program your cooperation is entirely voluntary and no legal action of any kind will be taken against you if you desire not to participate.

We believe that this program represents a means by which local consumers can work with local businesses to provide increased public protection and safety, and we, therefore, request your cooperation in allowing the volunteer to give the demonstration and to make the survey. If you should have any questions about this project, please do not hesitate to telephone us.

Sincerely,

Area Office Director



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
NATIONAL ORNAMENT & ELECTRIC LIGHT  
CHRISTMAS ASSOCIATION, INC.,  
LECO ELECTRIC COMPANY, INC.,  
NOMA-WORLD WIDE, INC., RADIANT  
GLASS FIBERS COMPANY, INC., GILBERT  
MANUFACTURING COMPANY, INC., DEPEND-  
ABLE ELECTRIC MFG. CO., INC.,  
ACLA, INC., BRONSON IMPORTS, LTD.,  
GEM ELECTRIC MANUFACTURING COMPANY, INC.,  
LIBERTY BELL CHRISTMAS, MINAMI INTER-  
NATIONAL CORPORATION, NATHAN SCHECTER  
& SONS, THE THOMAS COMPANY, INC., and  
ZELL ELECTRIC MFT. COMPANY, INC.,

Civil Action No.

Plaintiffs,

- against -

CONSUMER PRODUCT SAFETY COMMISSION,  
RICHARD O. SIMPSON, Chairman,  
LAWRENCE M. KUSHNER, BARBARA  
HACKMAN FRANKLIN, CONSTANCE E. NEWMAN,  
R. DAVID PITTLE, individually, and  
as members of the Commission,

Defendants.

-----x  
COMPLAINT FOR DECLARATORY  
JUDGMENT AND INJUNCTIVE RELIEF

Plaintiffs, by Aberman, Greene & Locker, their attorneys,  
complain of the above-named defendants, as follows:

JURISDICTION AND VENUE

1. The jurisdiction of the Court to hear this action  
is based upon the original jurisdiction of this Court to hear:

(a) Civil actions arising under the Constitution,  
laws or treaties of the United States wherein the amount in  
controversy exceeds the sum or value of \$10,000.00, exclusive  
of interest or costs, 28 U.S.C. §1331(a).

(b) Civil actions arising under any Act of  
Congress regulating commerce or protecting trade and commerce  
against restraints and monopolies, 28 U.S.C. §1337.

2. Venue lies in this Court under 28 U.S.C. §1391(e) as each defendant is an officer or employee of the United States or any agency thereof and one of the plaintiffs resides in this District, and no real property is involved in this action.

#### THE PARTIES

3. NATIONAL ORNAMENT & ELECTRIC LIGHT CHRISTMAS ASSOCIATION ("NOEL") is a not-for-profit corporation organized under the laws of the State of New York and its principal place of business is 1107 Broadway, New York, New York. NOEL is a trade association composed of manufacturers and distributors of Christmas ornaments and electric lights. LECO ELECTRIC COMPANY, INC. ("LECO") is a New York corporation with its principal place of business at Florida, New York. NOMA-WORLD WIDE, INC. ("NOMA") is a New Jersey corporation with its principal place of business at 200 Roosevelt Place, Palisades Park, New Jersey. RADIANT GLASS FIBERS COMPANY, INC. ("RADIANT") is a New York corporation with its principal office at 1164 Garrison Avenue, Bronx, New York. GILBERT MANUFACTURING COMPANY, INC. ("GILBERT") is a New York corporation with its principal office at 45-20 Astoria Boulevard, Long Island City, New York. DEPENDABLE ELECTRIC MFG. CO., INC. ("DEPENDABLE") is a New York corporation with its principal office at 110 Waterbury Street, Brooklyn, New York. ACLA, INC. ("ACLA") is a Massachusetts corporation with its principal office at 437 D Street, Boston, Massachusetts. BRONSON IMPORTS, LTD. ("BRONSON") is a New York corporation with its principal office at 200 Fifth Avenue, New York, New York. GEM ELECTRIC MANUFACTURING COMPANY, INC. ("GEM") is a New York corporation with its principal office at 390 Vanderbilt Motor Parkway, Hauppauge, New York. LIBERTY BELL CHRISTMAS ("LIBERTY") is a New York corporation with its principal office at 910 So. Oyster Bay Road, Hicksville, New York. MINAMI INTERNATIONAL CORPORATION ("MINAMI") is a New York corporation with its principal office at 366 Fifth Avenue, New York, New York. NATHAN SCHECTER & SONS ("NATHAN") is a Pennsylvania corporation with its principal



office at 45 N. Second Street, Philadelphia, Pennsylvania. THE THOMAS COMPANY, INC. ("THOMAS") is a New York corporation with its principal office at 485 Smith Street, Farmingdale, New York. ZELL ELECTRIC MFG. COMPANY, INC. ("ZELL") is a New York corporation with its principal place of business at 466 Broome Street, New York, New York.

4. Defendant CONSUMER PRODUCT SAFETY COMMISSION (defendant "COMMISSION") is a federal agency organized and existing pursuant to the Consumer Product Safety Act (P.L. 92-573, 86 Stat. 7207) and is responsible, among other things, for regulating risks of injury associated with consumer products, including toys.

5. Defendant RICHARD O. SIMPSON is Chairman and defendants LAWRENCE M. KUSHNER, BARBARA HACKMAN FRANKLIN, CONSTANCE E. NEWMAN and R. DAVID PITTLE are members of defendant COMMISSION, each having been duly appointed and qualified. Their offices are located at 1750 K Street, N.W., Washington, D.C. Each is sued individually and as a member of the Commission.

#### FACTS GIVING RISE TO THIS ACTION

6. Risks of injury associated with consumer products are subject to regulation by the defendant COMMISSION in accordance with the provisions of the Consumer Product Safety Act, 15 U.S.C.2501, (P.L. 92-573, 86 Stat. 7207 ("CPSA")).

7. Section 3(a)(1) of CPSA defines "consumer product" to mean any article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation or otherwise.

8. Section 3(a)(2) of CPSA defines the term "consumer product safety rule" to mean a consumer product safety standard described in Section 7(a) or a rule under this Act declaring a consumer product a banned hazardous product.

9. Section 7(a) of CPSA authorized the defendant COMMISSION to promulgate mandatory consumer product safety standards where it finds that such standards are "reasonably necessary to prevent or reduce an unreasonable risk of injury associated with such product." A consumer product safety standard shall consist of one or more of any of the following types of requirements:

(a) requirements as to performance, composition, contents, design, construction, finish, or packaging of a consumer product or (2) requirements that a consumer product be marked with or accompanied by clear and adequate warnings or instructions, or requirements respecting the form of warnings or instructions.

10. Section 7(b) of CPSA contains detailed procedures for the development of consumer product safety standards and provides as follows:

"A proceeding for the development of a consumer product safety standard under this Act shall be commenced by the publication in the Federal Register of a notice which shall -

(1) identify the product and the nature of the risk of injury associated with the product;

(2) state the Commission's determination that a consumer product safety standard is necessary to eliminate or reduce the risk of injury;

(3) include information with respect to any existing standard known to the Commission which may be relevant to the proceeding; and

(4) include an invitation for any person, including any State or Federal agency (other than the Commission), within 30 days after the date of publication of the notice (A) to submit to the Commission an existing standard as the proposed consumer product safety standard or (B) to offer to develop the proposed consumer product safety standard."

11. Section 8 of CPSA grants authority to defendant COMMISSION to administratively ban hazardous products if it finds that the product presents an unreasonable risk of injury and that no consumer product safety standard would adequately protect the public from the hazard. Section 8 provides as follows:



"Whenever the Commission finds that -

(1) a consumer product is being, or will be, distributed in commerce and such consumer product presents an unreasonable risk of injury; and

(2) no feasible consumer product safety standard under this Act would adequately protect the public from the unreasonable risk of injury associated with such product,

the Commission may propose and, in accordance with section 9, promulgate a rule declaring such product a banned hazardous product."

12. "Consumer product safety rules" which have been proposed under Sections 7 or 8 shall be promulgated pursuant to Section 553 of the Administrative Procedure Act, except that the informal rule-making has been modified to give interested parties an opportunity for oral presentation of views, data or arguments. Section 9(a)(2) of CPSA provides as follows:

"Consumer product safety rules which have been proposed under section 7(c), (e)(1) or (f) or section 8 shall be promulgated pursuant to section 553 of title 5, United States Code, except that the Commission shall give interested persons an opportunity for the oral presentation of data, views or arguments in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation."

13. Pursuant to Section 9(b) of CPSA, defendant COMMISSION is required to express, in the consumer product safety rule itself, the risk of injury which the standard is designed to eliminate or reduce. As a condition precedent to issuing a consumer product safety rule, defendant COMMISSION, pursuant to Section 9(c)(2) of CPSA, must make certain findings as follows:

"The Commission shall not promulgate a consumer product safety rule unless it finds (and includes such finding in the rule) -

(A) that the rule (including its effective date)

is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with such product;

(B) that the promulgation of the rule is in the public interest; and

(C) in the case of a rule declaring the product a banned hazardous product, that no feasible consumer product safety standard under this Act would adequately protect the public from the unreasonable risk of injury associated with such product."

14. Section 12 of CPSA gives the defendant COMMISSION emergency authority to deal with products which present imminent hazards. Sections 12(a) and (b) provide:

"(a) The Commission may file in a United States district court an action (1) against an imminently hazardous consumer product for seizure of such product under subsection (b) (2), or (2) against any person who is a manufacturer, distributor or retailer of such product, or (3) against both. Such an action may be filed notwithstanding the existence of a consumer product safety rule applicable to such product, or the pendency of any administrative or judicial proceedings under any other provision of this Act. As used in this section, and hereinafter in this Act, the term 'imminently hazardous consumer product' means a consumer product which presents imminent and unreasonable risk of death, serious illness, or severe personal injury.

"(b) (1) The district court in which such action is filed shall have jurisdiction to declare such product an imminently hazardous consumer product, and (in the case of an action under subsection (a) (2) to grant (as ancillary to such declaration or in lieu thereof) such temporary or permanent relief as may be necessary to protect the public from such risk. Such relief may include a mandatory order requiring the notification of such risk to purchasers of such product known to the defendant, public notice, the recall, the repair or the replacement of, or refund for, such product."

15. Section 15 of CPSA provides that with respect to "substantial product hazards" defendant COMMISSION, may order the manufacturer, distributor or retailer to take certain notice



and/or remedial action. Notice or remedial orders may be issued only after defendant COMMISSION has conducted formal hearings pursuant to Section 554 of the Administrative Procedure Act.

Section 15(a) defines the term "substantial product hazard" as follows:

"For purposes of this section, the term 'substantial product hazard' means -

(1) a failure to comply with an applicable consumer product safety rule which creates a substantial risk of injury to the public, or

(2) a product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public.

16. Sections 15(c) and (d) of CPSA relate to defendant COMMISSION's authority to order the giving of public notice and to order replacement repair or refunds as follows:

"(c) If the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a hearing in accordance with subsection (f) of this section) that a product distribution in commerce presents a substantial product hazard and that notification is required in order to adequately protect the public from such substantial product hazard, the Commission may order the manufacturer or any distributor or retailer of the product to take any one or more of the following actions:

(1) To give notice of the defect or failure to comply.

(2) To mail notice to each person who is a manufacturer, distributor, or retailer of such product.

(3) To mail notice to every person to whom the person required to give notice knows such product was delivered or sold.

Any such order shall specify the form and content of any notice required to be given under such order."

\* \* \*

"(d) If the Commission determines (after affording interested parties, including consumers and consumer organizations, an opportunity for a hearing in accordance with subsection (f) that a product distributed in commerce presents a substantial product hazard and that action under this subsection is in the public interest, it may order the manufacturer or any distributor or retailer of such product to take whichever of the following actions the person to whom the order is directed elects:

(1) To bring such product into conforming with the requirements of the applicable consumer product safety rule or to repair the defect in such product.

(2) To replace such product with a like or equivalent product which complies with the applicable consumer product safety rule or which does not contain the defect.

(3) To refund the purchase price of such product (less a reasonable allowance for use, if such product has been in the possession of a consumer for one year or more (A) at the time of public notice under subsection (c), or (B) at the time the consumer receives actual notice of the defect of noncompliance, (whichever first occurs)."

17. Section 15(f) of CPSA provides for a formal hearing before notice and remedial orders as follows:

"(f) An order under subsection (c) or (d) may be issued only after an opportunity for a hearing in accordance with section 554 of title 5, United States Code, except that, if the Commission determines that any person who wishes to participate in such hearing is a part of a class of participants who share an identity of interest, the Commission may limit such person's participation in such hearing to participation through a single representative designated by such class (or by the Commission if such class fails to designate such a representative)."

18. Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, reads, in pertinent part, as follows:

"(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with the law. The notice shall include - -



(1) a statement of the time, place, and nature of public rule making proceedings;

(2) reference to the legal authority under which the rule is proposed; and

(3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

Except when notice or hearing is required by statute, this subsection does not apply - -

(A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

"(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose.

When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

"(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except - -

(1) a substantive rule which grants or recognizes an exemption or relieves a restriction;

(2) interpretative rules and statements of policy; or

(3) as otherwise provided by the agency for good cause found and published with the rule."

(Emphasis supplied)

19. Section 552(a) of the Administrative Procedure Act (APA), 5 U.S.C. 552(a) provides, in pertinent part, as follows:

1. Each agency shall separately state and currently publish in the Federal Register for the guidance of the public -

(A) \* \* \* \*

(B) \* \* \* \*

(C) \* \* \* \*

(D) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) Each amendment, revision or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. \*

2. Each agency, in accordance with published rules, shall make available for public inspection and copying -

(A) Final opinions\* \* \* \*

(B) Those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and

(C) Administrative staff manuals and instructions to staff that affect a member of the public \* \* \* \*

Each agency shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter issued, adopted or promulgated after July 4, 1967 and required by this paragraph to be made available or published. A final order, opinion, statement of policy, interpretation or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if -



(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(Emphasis supplied)

20. In or about October of 1975, defendant COMMISSION promulgated an order entitled "Consumer Deputy Program - Retail Survey of Christmas Decorative Lights" providing guidelines for conducting a volunteer program relating to Christmas decorative lights ("Christmas decorative lights order"). The program which begins on November 1, 1975 involves surveys of retail outlets by consumer volunteers for Christmas decorative lights which have been identified as containing defects which may present substantial hazard as defined in section 15(a) of CPSA. Pursuant to the Christmas decorative lights order, volunteers will be trained to check Christmas decorative lights for potential hazards and to demonstrate to retailers the methods for checking lights in stock for hazards. The volunteers will be supplied with a letter of introduction from defendant COMMISSION stating that said individual "is a consumer volunteer participating with [defendant] in a program to make retailers aware of the potential hazards of Christmas decorative lights." The volunteers are instructed to make the surveys; offer demonstrations; make reports and notify retailers that information will be turned over to defendant COMMISSION and "that an official follow-up visit may result." (Copy of the order is annexed as Exhibit A.)

21. Accordingly, CPSA provides for the regulation of unreasonable risks of injury by defendant COMMISSION relating to consumer products such as Christmas decorative lights (a) by the promulgation of banning orders under section 8; and (b) by promulgation of consumer products safety standards under Section 7; and

(c) by notice and remedy orders under section 15. In addition, defendant COMMISSION is authorized to regulate imminent hazards under section 12. Defendant COMMISSION is not authorized to regulate risks of injury of any kind associated with Christmas decorative lights by promulgation of orders such as the Christmas decorative lights order herein.

22. Plaintiffs, by their attorneys, have requested defendant COMMISSION to reconsider and rescind the aforesaid Christmas decorative lights order. Defendant COMMISSION refused to rescind said order and defendant COMMISSION has taken steps to train volunteers in the implementation and administration of said order which directs that the program begin on November 1, 1975.

23. Plaintiffs have exhausted their administrative remedies.

#### NATURE OF THIS ACTION

24. This is a suit for a declaratory judgment, pursuant to 28 U.S.C. Sec. 2201, that the promulgation of the Christmas decorative lights order is null and void, of no effect and unauthorized by law and for such further necessary or proper relief, including granting of an injunction, to enjoin defendants from taking any action in reliance upon said order and from enforcing said order based on such declaratory judgment, 28 U.S.C. Sec. 2202.

25. Plaintiffs, because of the gravity of the actual and threatened harm to them arising from the actual and threatened enforcement by defendants of said Christmas decorative lights order request a speedy hearing and advancement of the cause on this Court's calendar pursuant to Rule 57 of the Federal Rules of Civil Procedure.



26. In view of defendant's actual and threatened enforcement of the Christmas decorative lights order and plaintiffs' contention that the promulgation of the said order is null and void, of no effect and unauthorized by law, there is an actual controversy within the jurisdiction of this Court. A binding declaration by this Court as to the validity of the said order will effectively adjudicate the rights of the parties.

WRONGS COMPLAINED OF

27. The Christmas decorative lights order is void, of no effect and unauthorized by law for the following reasons:

(a) The regulation of risks of injury associated with Christmas decorative lights by defendant COMMISSION must comply with either (i) Section 7 relating to promulgation of consumer product safety standards which must be promulgated under the rule making procedures of section 553 of APA, or (ii) Section 8 relating to banning orders which must be promulgated under the rule making procedures of Section 553 of APA, or (iii) Section 15 relating to notice and remedy orders which must be promulgated under the adjudicative procedures of Section 554 of APA. No action can be taken by defendant COMMISSION under Section 12 unless an action is instituted in a U.S. District Court and imminent and unreasonable risk of death, serious illness or severe personal injury is presented by the product. Accordingly, defendant COMMISSION has failed to comply with Sections 7, 8, 12 or 15 by promulgating the Christmas decorative lights order.

(b) Defendant COMMISSION has published an illustrated booklet entitled "What Can You Do Now and How Should You Do It?" and promulgated a suggested procedure for identifying hazards in Christmas decorative lights, which procedure is to be followed

by consumer volunteers. (See Appendix 4, Exhibit A). Said procedure includes a demonstration set of lights which contain certain alleged hazards.

The hazards are specified in the orders as follows:

"a. Cracked sockets, Danger Sparks and Burns to Fingers.

b. Add-on connectors Which Fall Apart, Danger-Electrical Shock and Tree Fire.

c. Exposed Bare Wires, Danger-Shock Hazard.

d. Exposed Contact or Electrode Wires from Base of Bulb, Shock Hazard.

e. When bulb is removed from socket, socket contact wire shoves through from bottom to top of socket exposing bare wires - Shock Hazard."

Defendant COMMISSION has, in effect, promulgated a consumer product safety rule without having made any of the findings which are required pursuant to Section 9(c) of CPSA. Defendant COMMISSION has failed to comply with Section 9 in promulgating the Christmas decorative lights order.

(c) Defendant COMMISSION has exceeded its statutory mandate by delegating authority to unskilled volunteers without technical training who may determine whether complex electric products present potential hazards. Said volunteers are provided with letters of introduction on the stationery of defendant COMMISSION presenting themselves as consumer volunteers participating with defendant COMMISSION. Said volunteers are supplied with report forms (Exhibit A, Appendix 5) to be filed with the defendant COMMISSION; they are authorized to perform specified test procedures to determine whether decorative lights contain potential hazards and they are authorized to state to the retailer that the



information in the report will be turned over to defendant COMMISSION and that an official follow-up visit may result. All of the foregoing constitutes an unlawful delegation of authority to untrained individuals who are clothed with the indicia of governmental expertise, in excess of defendant COMMISSION's statutory authority.

(d) The determination in the order and in the booklet "What Can You Do Now and How Should You Do it?" that certain conditions which may be found in Christmas decorative lights constitute potential hazards has been made in violation of the rule-making procedures of §553 of the Administrative Procedure Act. With respect to plaintiffs' products, no general notice of proposed rule making was published in the Federal Register stating (1) the time, place and nature of the rule-making proceeding; (2) a reference to the legal authority therefor; and (3) either the terms or substance of the proposed rule or a description of the subject and issues involved. Furthermore, plaintiffs were not given an opportunity to participate in the rule making through submission of written data, views or argument with or without opportunity for oral presentation. Neither notice nor opportunity to comment was provided with respect to the determination that plaintiffs' products presented potential hazards.

(e) The Christmas decorative lights order was based upon certain internal test procedures developed by defendant COMMISSION relating to the testing of decorative lights and to the extent that said internal test procedures have not been published in the Federal Register pursuant to 5 U.S.C. 552(a)(1), plaintiffs cannot be adversely affected thereby. To the extent

that said internal test procedures constitute statements of policy or interpretations or administrative staff manuals and instructions and have not been indexed and either made available or published pursuant to 5 U.S.C. 552(a)(2), they may not be relied upon or cited as authority by defendants against plaintiffs. Plaintiffs have not had actual or timely notice of said internal test procedures, with respect to the products which they manufacture and sell.

(f) Defendant COMMISSION, by promulgating the Christmas decorative lights order, has disseminated information which identifies and adversely affects the products distributed by plaintiffs and the Christmas decorative lights industry and has failed to give the members of said industry, pursuant to §6(b)(1) of CPSA, 30 days in which to comment on the proposed disclosure of information. Accordingly, defendant COMMISSION has violated the provisions of §6.

28. Plaintiffs have gross annual sales in excess of \$50,000,000.00. A large percentage of plaintiff's sales volume is represented by its sales of the products which are subject to the Christmas decorative lights order. Considerable numbers of said products are currently in the inventory of plaintiffs' customers or in plaintiffs' inventory.

29. The promulgation of Christmas decorative lights order is causing plaintiffs unusual hardship and irreparable injury and damage from which there is no adequate remedy at law. Plaintiffs have been notified by their customers that they will return Christmas decorative lights to them in the event that the Consumer Deputies commence their surveys. Said customers have stated that they cannot incur the time and expense during the Christmas selling season to allow Consumer Deputies to inspect



their entire supply of Christmas decorative lights. The determination by unskilled volunteer that plaintiffs' products present potential hazards will not be subject to challenge by plaintiffs because of the limited amount of time prior to Christmas and will have an unfair, coercive and detrimental effect upon said retailers who feel compelled to return or remove from sale said products rather than dispute such determinations. Furthermore, such determinations by unskilled volunteers will cause plaintiffs considerable hardship and loss of good will in the industry with respect to their reputation for manufacturing and selling safe products, especially since plaintiffs are in their primary selling season for Christmas.

30. The defendants, unless enjoined and restrained, will continue to enforce the Christmas decorative lights order and plaintiffs will be subjected to loss of sales and returns, all of which will cause plaintiffs great expense and hardship.

WHEREFORE, plaintiffs demand:

1. That said order entitled "Consumer Deputy Program - Retail Survey of Christmas Decorative Lights" be declared null and void, of no effect and unauthorized by law.
2. That the Court restrain defendants and their officers, employees, agents or servants from the enforcement of said order, and any other orders relating to plaintiffs' Christmas decorative lights.
3. That pending the final hearing and determination, a preliminary injunction issue restraining defendants, their officers, employees, agents or servants from the enforcement of said order and any other orders relating to plaintiffs' Christmas decorative lights.

4. That the Court issue such other or further relief as it may deem necessary and proper.

Dated: New York, New York  
November 7, 1975

ABERMAN, GREENE & LOCKER

By: \_\_\_\_\_

*David Greene*

A Member of the Firm  
Attorneys for Plaintiffs  
540 Madison Avenue  
New York, New York 10022  
Tel. No.: (212) 832-7979



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
NATIONAL ORNAMENT & ELECTRIC LIGHT CHRISTMAS  
ASSOCIATION, INC., LECO ELECTRIC COMPANY,  
INC., NOMA-WORLD WIDE, INC., RADIANT GLASS  
FIBERS COMPANY, INC., GILBERT MANUFACTURING  
COMPANY, INC., DEPENDABLE ELECTRIC MFG. CO.,  
INC., ACLA, INC., BRONSON IMPORTS, LTD., GEM  
ELECTRIC MANUFACTURING COMPANY, INC., LIBERTY  
BELL CHRISTMAS, MINAMI INTERNATIONAL CORP-  
ORATION, NATHAN SCHECTER & SONS, THE THOMAS  
COMPANY, INC., and ZELL ELECTRIC MFG. COMPANY,  
INC.,

ORDER TO SHOW  
CAUSE AND  
TEMPORARY RE-  
STRAINING ORDER

Plaintiffs,

Civil Action  
File No.

- against -

CONSUMER PRODUCT SAFETY COMMISSION, RICHARD  
O. SIMPSON, Chairman, LAWRENCE M. KUSHNER,  
BARBARA HACKMAN FRANKLIN, CONSTANCE E.  
NEWMAN, R. DAVID PITTLE, individually, and as  
members of the Commission,

Defendants.

-----x  
Upon the summons and complaint, the annexed affidavit of  
JEROME NEUSTADT, sworn to November 7, 1975 and the exhibits  
annexed thereto, and it appearing that the defendants have been  
and are now engaged in acts and practices which fail to comply  
with the provisions of §§ 6, 7, 8, 9 and 15 of the Consumer  
Product Safety Act, 15 U.S.C. 2055, 2056, 2057, 2058 and 2064 and  
§§ 552 and 553 of the Administrative Procedure Act, 5 U.S.C. 552,  
553, and that said defendants have been and are now enforcing a  
certain order entitled "Consumer Deputy Program-Retail Survey  
of Christmas Decorative Lights"; and it further appearing that un-  
less restrained forthwith, defendants will continue to engage in  
said acts and practices and thereby immediate and irreparable in-  
jury will be done to the plaintiffs; and it further appearing that  
as long as defendants continue to engage in said acts and pract-  
ices any judgment that this court may render in final determination  
of this cause will be to that extent of no effect and the court  
being fully advised in the premises; it is hereby

ORDERED, that the defendants or their attorneys, show cause, at a term of this Court for the hearing of motions to be held in Room , United States Court House, 225 Cadman Plaza, Brooklyn, New York, on the day of November, 1975, at o'clock in the noon of that day, or as soon thereafter as counsel can be heard why an order, pursuant to Rule 65 (a) of the Federal Rules of Civil Procedure, should not to made herein preliminarily enjoining defendants, their officers, agents, servants, employees, attorneys and all persons in active concert or participation with any of them, restraining them from the enforcement of the order entitled "Consumer Deputy Program-Retail Survey of Christmas Decorative Lights" and any other orders relating to Christmas decorative lights manufactured by plaintiffs; and it is further

ORDERED, that pending determination of plaintiffs' motion for a preliminary injunction, defendants, their officers, agents, servants, employees, attorneys and all parties in active concert or participation with any of them, jointly and severally hereby are enjoined and restrained from the enforcement of the order entitled "Consumer Deputy Program-Retail Survey of Christmas Decorative Lights" and any other orders relating to Christmas decorative lights manufactured by plaintiff; and it is further

ORDERED, that no undertaking be filed by the plaintiffs since it does not appear that any damages may be suffered or sustained by any party who is found to be wrongfully restrained.

Service of the within order shall be deemed proper if a copy of this order together with the supporting papers are served upon the defendants as follows:



By delivering a copy to the United States Attorney for the Eastern District of New York and by sending a copy by registered or certified mail to the Attorney General of the United States at Washington, D. C. and by sending a copy by registered or certified mail to the Consumer Product Safety Commission at Washington, D. C., and to each of the individual defendants at the offices of the Consumer Product Safety Commission at Washington, D. C.

Service upon defendants by counsel shall be effected on or before            o'clock in the            noon on November            , 1975.

Service of this order, and the summons, complaint, affidavits and memorandum herein, may be made by any person over the age of 18 years, selected for that purpose by the plaintiff.

Dated: Brooklyn, New York

November            , 1975.

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United States District  
Judge

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X

NATIONAL ORNAMENT & ELECTRIC LIGHT	:	
CHRISTMAS ASSOCIATION, INC., et al.,	:	
	:	
Plaintiffs,	:	
	:	
-against-	:	
	:	<u>AFFIDAVIT</u>
CONSUMER PRODUCT SAFETY COMMISSION,	:	
RICHARD O. SIMPSON, Chairman,	:	Index No.
LAWRENCE M. KUSHNER, BARBARA HACKMAN	:	
FRANKLIN, CONSTANCE E. NEWMAN, R.	:	
DAVID PITTLE, individually, and as	:	
members of the Commission,	:	
	:	
Defendants.	:	

-----X

STATE OF NEW YORK     )  
                              :    SS.:  
COUNTY OF NEW YORK    )

JEROME NEUSTADT, being duly sworn, deposes and says:

1. I am Vice President of LECO ELECTRIC COMPANY, INC., (LECO) one of the corporate plaintiffs herein and a member of the Board of Directors of plaintiff, NOEL. I am fully familiar with the facts in this matter.

2. I submit this affidavit in support of a motion for a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining defendants from enforcing an order entitled "Consumer Deputy Program-Retail Survey of Christmas Decorative Lights" pending a full trial upon the merits and for a temporary restraining order in this action.

3. This action was instituted by plaintiffs to declare said Christmas decorative lights order null and void and unauthorized by law. A copy of the complaint is annexed hereto as Exhibit "1."



4. Plaintiff NOEL is a not-for-profit corporation existing pursuant to the laws of the State of New York. It is a trade association whose members are engaged in the manufacture and sale of Christmas decorative lights in the Eastern District of New York and throughout the United States as well as importing of said products.

5. In October of 1975, the defendant Consumer Product Safety Commission (COMMISSION) issued an order providing guidelines for conducting a Consumer Deputy Program on Christmas decorative lights. A copy is annexed to the complaint herein as Exhibit "A". The program is designed to utilize consumers and consumer groups to supplement defendant COMMISSION's inspection efforts. The objective is to survey retail outlets for Christmas decorative lights which may present potential hazards.

6. The effective date of the program begins November 1, 1975 and will end on January 15, 1976. Obviously the period from November 1 to December 25 is the only selling season for Christmas decorative lights and the time of the year when all retail outlets are engaged in the height of holiday sales activity. It is totally unreasonable and arbitrary for defendant COMMISSION to have chosen this time of year to implement its survey. Certainly, if the real intention was education of the retailers, that objective could have been better served by instituting the program in June or July when retailers would have more time to avail themselves of the instruction.

7. The program provides for the training of volunteers. Each volunteer will be supplied with a booklet "What Can You Do Now and How Should You Do It?" This booklet outlines the allegedly potential hazards in decorative lights. Each deputy is provided with a demonstration set of lights on which certain alleged hazards are visible. After demonstration, the deputy

makes a survey of the display of decorative lights and records certain information, including manufacturers' name and address; name of product; style number; catalog number and other factual data. The deputy then asks the retailers if an inspection will be made. The deputy then advises the retailer that his report will be filed with defendant COMMISSION and that "an official follow-up visit may result."

A copy of the said booklet is annexed as Exhibit "2." The booklet contains a five step procedure to ascertain the existence of potential hazards. Step 3 provides for performance of a rotating procedure, the result of which may depend upon the strength of the individual volunteer and is subjective rather than objective.

In addition to the booklet, the volunteer provides a copy of Fact Sheet No. 32 entitled "Substantial Hazards." A copy is annexed as Exhibit "2A."

8. The deputy is provided with a letter of introduction on the stationery of defendant COMMISSION identifying the deputy as a volunteer participating with defendant COMMISSION "in a program to make retailers aware of the potential hazards of Christmas decorative lights." The cumulative effect of the letter of introduction; booklet; fact sheet and demonstration set is to create the impression of a dangerous condition warranting removal of decorative lights from sale, all without notice or hearing.

9. No proceeding has ever been commenced by defendant COMMISSION for the promulgation of a consumer product safety standard relating to Christmas decorative lights under Section 7. Such a proceeding would require publication in the Federal Register of a notice. Said notice would require the identification of the product and risk involved; state defendant COMMISSION'S determination that a standard is necessary to eliminate or reduce risk of injury; include information with respect to any existing standards and include an invitation to interested parties to



develop a standard. Thereafter defendant COMMISSION would be required under Section 9 to promulgate the standard pursuant to Section 553 of the Administrative Procedure Act (APA), except that an opportunity would be given for oral presentation of data, views and argument, in addition to written submissions. None of these safeguards have been afforded to plaintiffs herein.

10. No proceeding has ever been commenced by defendant COMMISSION to promulgate a rule declaring that Christmas decorative lights are banned hazardous products pursuant to Section 8. Such a proceeding would be subject to similar safeguards relating to notice and opportunity to be heard as are provided with respect to consumer product safety standards under Section 7. None of these safeguards have been afforded to plaintiffs herein.

11. Prior to promulgating any consumer product safety rule under Sections 7 or 8, defendant COMMISSION must make certain findings. Under Section 9 (c), defendant must consider, among other things, any means of achieving its objective "while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety." Certainly the implementation of the Christmas decorative lights order would seriously disrupt manufacturing and other commercial practices since it sends volunteers into retail stores during the height of the selling season to survey for potential hazards in products which are only sold during that limited time period.

12. No determination that Christmas decorative lights present a "substantial product hazard" under Section 15 has been made by defendant COMMISSION. Such a determination is necessary before a notice or remedy order can be made under Section 15 (c) and (d). Such an order would require a formal adjudicative hearing at which witnesses could be presented and evidence offered, subject to cross-examination. None of these safeguards have been afforded to the plaintiffs herein.

13. The issuance by defendant COMMISSION of the test procedures for identifying alleged potential hazards in Christmas decorative lights are "rules" which have a substantial impact upon this industry and upon plaintiffs. Accordingly, such substantive rules must be promulgated in accordance with the rulemaking procedures of the Administrative Procedure Act (5 U.S.C. 553) and must be published under the Freedom of Information Act (5 U.S.C. 552).

14. Defendant COMMISSION has determined that certain aspects of Christmas decorative lights present "potential hazards". By training its volunteers to inspect for those potential hazards in retail stores immediately before Christmas, defendant has completely circumvented the procedures by which manufacturers are entitled to challenge those findings. Implicit in CPSA are the safeguards which require that findings of unreasonable risks of injury in consumer products be made only by the prescribed statutory procedures which assure manufacturers notice and opportunity to be heard and require specific findings to be made and published by defendant COMMISSION.

15. Plaintiff LECO has never received a complaint in almost 29 years of business relating to any injuries from its Christmas decorative lights and all of the plaintiffs believe their products are safe in all respects.

16. Plaintiffs are at the peak of their only selling season for the Christmas holiday. They will suffer severe and immediate financial hardship if defendant COMMISSION enforces its order.



Plaintiffs will have no opportunity to challenge the findings of unskilled volunteers that certain decorative lights present potential hazards. Retailers will undoubtedly return all products which a consumer deputy has inspected for potential hazards. Since the season is extremely short, plaintiffs will not be able to review the findings which have been made by these volunteers and to correct any erroneous findings which may have been made. Manufacturers have had no notice of or opportunity to comment on the five step test procedure contained in Exhibit "2." There is serious doubt as to the reasonableness of these procedures and the allegations of potential hazards created by the testing.

17. Since the period between November 1 and December 25 is the peak retail selling season, many buyers have informed us that if a consumer deputy enters their premises, they will not have sufficient time to devote to the proposed inspection. They further stated that they will not risk the possibility of further governmental surveillance and will return all decorative lights in stock rather than incur the time and expense of inspecting all of the decorative lights in stock. Annexed to this moving affidavit as Exhibit "3" are affidavits of various retailers who confirm the serious injury which our industry will incur.

18. Plaintiffs have annual sales in excess of \$50,000,000. a large percentage of which is attributable to the products in issue. Plaintiffs have considerable numbers of these products in their own inventory and in the inventory of its customers. Inability to deliver these products which have been ordered by customers or return of previously sold products would result in financial disaster. Since most of the retailers have not yet paid for the merchandise because of billing procedures in the industry, the likelihood of returns is even greater. Furthermore, the order would cause plaintiffs to lose considerable goodwill in the industry with respect to its reputation for manufacturing safe products.

19. Having failed to act in accordance with the procedural safeguards of §§ 7, 8, 9 and 15 of CPSA, defendant COMMISSION also ignored the provisions of §6(b)(1). Said section provides before disseminating any information which identifies manufacturers of consumer products, defendant COMMISSION is directed to give said manufacturers 30 days in which to comment on the proposed disclosure of information. The procedure is intended to permit the manufacturers an opportunity to come forward with explanatory data or other relevant information of the Commission's consideration.

The data contained in the Christmas decorative lights order; the booklet and the demonstration set all constitute "information" within the meaning of §6(b)(i). Plaintiffs have obviously been denied the opportunity to comment on this disclosure by defendant COMMISSION.

20. Injunction is necessary and proper in the circumstances of this case. Deponent respectfully requests that the order to show cause annexed hereto and containing a temporary restraining order enjoining and restraining defendants pending a hearing for a preliminary injunction be granted by the Court and that a date for said hearing be set.

21. No other provisional remedy has been secured or sought in this action and no prior application has been made for the same or similar relief as is sought herein.

Sworn to before me this

7 day of November, 1975.

151

Jerome Neustadt





# FACT SHEET

**U.S. CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, D.C. 20207**

**No. 32: "Substantial Hazards" -- Section 15 of the Consumer Product Safety Act**

During the first year of operation of the U.S. Consumer Product Safety Commission, about 130 defect notifications involving over 14 million product units were received under Section 15 of the Consumer Product Safety Act.

Those 14 million product units presented the potential for substantial risk of injury, and the manufacturers, distributors, and retailers of those products, in voluntary cooperation with CPSC, notified owners of the most defective products. In some cases, the products were repaired or repurchased.

Business has a responsibility to report to the Commission any product defect which could create a substantial risk of injury to consumers.

The Consumer Product Safety Act states that manufacturers, importers, distributors, and retailers must immediately inform the Commission if any product fails to meet an applicable consumer product safety rule or contains a defect that could create a substantial product hazard. This applies to all products which fall under the Commission's jurisdiction. Failure to report a defect or furnish required information could result in civil and criminal penalties.

The initial notification must be made within 24 hours to the Director of Compliance, Consumer Product Safety Commission, Washington, D.C. 20207 (telephone: 301-496-7631). The Chief executive officer of the notifying company has the responsibility for signing and certifying any information provided to the Commission. This responsibility may be delegated to another person, but the Commission must be advised in writing. The initial notification must: identify the product; give the name and address of the manufacturer, if known; give the names and addresses of every distributor and retailer, if known; specify the nature and extent of the defect or failure to comply with an applicable safety rule; and provide the name and address of the person informing the Commission.

If the initial notification is made orally, written confirmation must be forwarded to the Commission within 48 hours. Additional information that should be reported within 48 hours, if available, includes: the manner in which information concerning the hazard was obtained; copies of any consumer complaints about the hazard; the number, nature, and severity of any injuries associated with the product hazard; the number of units involved; how remaining inventory will be disposed; any identifying marks or numbers on the potentially hazardous units.

In addition, manufacturers, importers, distributors, or retailers are requested to inform the Commission what action will be taken to correct the defect, whether purchasers have been notified through public notice, direct mail or other means, and whether defective products in the hands of consumers will be refunded, replaced, or repaired.

## substantial hazards -- 2

The Section 15 Group, located in CPSC Headquarters, manages the Section 15 activities within the Commission. The Group coordinates a hazard risk evaluation to determine if a product defect may create a substantial risk of injury.

When information is received from consumers, industry, or other groups about a possible substantial hazard, the CPSC field staff contacts the individual making the report to gather details about the product and any injuries associated with it. Working with CPSC engineers and other staff members, the Section 15 Group then evaluates the risk of injury associated with the product. If the group decides that a substantial risk of injury to the public could result from the use of the product, the Group sends a "Pre-15 (b) Letter" to the manufacturer, distributor, or retailer indicating CPSC's knowledge of the situation and requesting the firm to provide an evaluation of the product, a summary of relevant complaints received by the firm, an estimate of the number of products involved, and details concerning any corrective action already taken.

If a firm alleges that a substantial hazard does not exist, and if the Commission concurs, then no further action is taken. However, if the Commission believes that a hazardous situation is still identifiable, the Commission will initiate formal procedure to determine that a substantial hazard exists and that a corrective action must be taken.

Section 15 is one of the most important parts of the Consumer Product Safety Act because it enables the Commission to see that the public is quickly notified of all possible substantial product hazards and that industry must repair, replace, or repurchase those defective products. Section 15 puts a large burden on manufacturers, importers, distributors, and retailers to monitor the safety of their own products. The number of products already affected by Section 15 demonstrates the magnitude of the problem with which industry and the Commission must deal in eliminating consumers' exposure to unreasonable risk of injury.

To report a product hazard or a product-related injury, write to the U.S. Consumer Product Safety Commission, Washington, D.C. 20207. In the continental United States, call the toll-free safety hot line 800-638-2666. Maryland residents only, call 800-492-2937.

August 1974



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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NATIONAL ORNAMENT & ELECTRIC LIGHT  
CHRISTMAS ASSOCIATION,

Plaintiff,

AFFIDAVIT

-against-

Civil Action No.

CONSUMER PRODUCT SAFETY COMMISSION,  
RICHARD O. SIMPSON, Chairman,  
LAWRENCE M. KUSHNER, BARBARA  
HACKMAN FRANKLIN, CONSTANCE E.  
NEWMAN, R. DAVID PITTLE, individ-  
ually, and as members of the  
Commission,

Defendants.

----- x

STATE OF NEW YORK     )  
COUNTY OF NEW YORK    ) ss:

Harriet Goldston                     , being duly sworn, deposes and  
says:

1. I am the owner         of         Christmas Eve  
I am fully familiar with the facts in this matter.

2. I submit this affidavit in support of a motion  
for a preliminary injunction pursuant to Rule 65 of the Federal  
Rules of Civil Procedure enjoining defendants from enforcing  
its Christmas decorative lights order pending a full trial upon  
the merits and for a temporary restraining order in this action.

3. I have read the affidavit of JEROME NEUSTADT  
together with the exhibits annexed.

4. Christmas Eve                     single  
  proprietorship  
is a ~~corporation~~  
Mass.  
existing pursuant to the laws of the State of ~~New York~~ and is  
engaged in the sale at retail of Christmas decorative lights,  
among other products.                     Christmas Eve     has been  
in business for over     3     years. I have checked our records

of reported accidents for the last 3 years and there is not one report of any injury relating to these decorative lights.

5. The period between November 1, 1975 and December 25, 1975 is the height of the retail selling season for Christmas. Our company has employed temporary sales personnel and anticipate considerable numbers of consumers in our stores during this entire period. During this period, our personnel do not have the time to allow volunteers to survey all of our stock of Christmas decorative lights. At this time of the season, our company cannot spare personnel whose function will be to inspect existing inventory. If a consumer deputy demonstrates what appears to be a potential hazard, our company will have no alternative but order that the product be removed from the shelves.

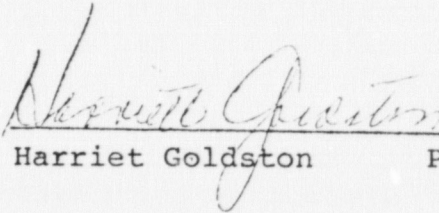
6. Since our company does not want to risk the penalties which may be incurred if it sells defective products and since time limitations preclude our own inspection or inspection by the manufacturer, our company will be compelled to remove these products from the shelves and eventually return them for credit.

7. Although these consumer deputies are not employees of defendant COMMISSION, they appear to be clothed with a degree of Commission authority and according to the Deputy Program reports will be filed with the Commission and official follow-up visits will follow. Such suggestions tend to have a coercive effect and most companies will not risk the penalties of non-compliance.



8. The action of defendant COMMISSION will certainly disrupt our retail sales, and the sales of the manufacturers of Christmas decorative lights. If defendant really wanted to educate retailers, it should have acted in June or July when our personnel had time to comply.

9. The action of defendant COMMISSION in sending volunteers to retail stores during this crucial sales period is likely to cause great hardship to manufacturers of Christmas decorative lights.

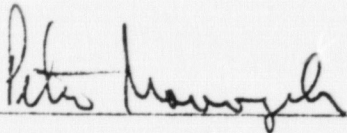


Harriet Goldston

President

Sworn to before me this

5th day of November 1975.



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

NATIONAL ORNAMENT & ELECTRIC LIGHT  
CHRISTMAS ASSOCIATION,

Plaintiff,

AFFIDAVIT

-against-

Civil Action No.

CONSUMER PRODUCT SAFETY COMMISSION,  
RICHARD O. SIMPSON, Chairman,  
LAWRENCE M. KUSHNER, BARBARA  
HACKMAN FRANKLIN, CONSTANCE E.  
NEWMAN, R. DAVID PITTLE, individ-  
ually, and as members of the  
Commission,

Defendants.

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss:

*ARTHUR WACHTEL*, being duly sworn, deposes and

says:

1. I am the *VICE PRESIDENT* of *MERCHANTS BUYING SYNDICATE INC.*  
I am fully familiar with the facts in this matter.

2. I submit this affidavit in support of a motion  
for a preliminary injunction pursuant to Rule 65 of the Federal  
Rules of Civil Procedure enjoining defendants from enforcing  
its Christmas decorative lights order pending a full trial upon  
the merits and for a temporary restraining order in this action.

3. I have read the affidavit of *NATIONAL ORNAMENT & ELECTRIC  
LIGHT CHRISTMAS ASSOCIATION*  
together with the exhibits annexed.

4. *MERCHANTS BUYING SYNDICATE INC.* is a corporation  
existing pursuant to the laws of the State of New York and is  
engaged in the sale at retail of Christmas decorative lights,  
among other products. *MERCHANTS BUYING SYNDICATE INC.* has been  
in business for over *15* years. I have checked our records



of reported accidents for the last 15 years and there is not one report of any injury relating to these decorative lights.


5. The period between November 1, 1975 and December 25, 1975 is the height of the retail selling season for Christmas. Our company has employed temporary sales personnel and anticipate considerable numbers of consumers in our stores during this entire period. During this period, our personnel do not have the time to allow volunteers to survey all of our stock of Christmas decorative lights. At this time of the season, our company cannot spare personnel whose function will be to inspect existing inventory. If a consumer deputy demonstrates what appears to be a potential hazard, our company will have no alternative but order that the product be removed from the shelves.

6. Since our company does not want to risk the penalties which may be incurred if it sells defective products and since time limitations preclude our own inspection or inspection by the manufacturer, our company will be compelled to remove these products from the shelves and eventually return them for credit.

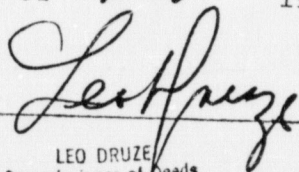
7. Although these consumer deputies are not employees of defendant COMMISSION, they appear to be clothed with a degree of Commission authority and according to the Deputy Program reports will be filed with the Commission and official follow-up visits will follow. Such suggestions tend to have a coercive effect and most companies will not risk the penalties of non-compliance.

8. The action of defendant COMMISSION will certainly disrupt our retail sales and the sales of the manufacturers of Christmas decorative lights. If defendant really wanted to educate retailers, it should have acted in June or July when our personnel had time to comply.

9. The action of defendant COMMISSION in sending volunteers to retail stores during this crucial sales period is likely to cause great hardship to manufacturers of Christmas decorative lights.



Sworn to before me this  
6 day of Nov 1975.



LEO DRUZE  
Commissioner of Deeds  
City of New York 2-1533  
Certificate Filed in New York County  
Commission Expires March 1, 1976



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

NATIONAL ORNAMENT & ELECTRIC LIGHT  
CHRISTMAS ASSOCIATION,

Plaintiff,

AFFIDAVIT

-against-

Civil Action No.

CONSUMER PRODUCT SAFETY COMMISSION,  
RICHARD O. SIMPSON, Chairman,  
LAWRENCE M. KUSHNER, BARBARA  
HECKMAN FRANKLIN, CONSTANCE E.  
NEWMAN, R. DAVID PITTLE, individ-  
ually, and as members of the  
Commission,

Defendants.

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss:

Jack Sherman , being duly sworn, deposes and  
says:

1. I am the owner of Myrtle Variety, Inc.  
I am fully familiar with the facts in this matter.
2. I submit this affidavit in support of a motion  
for a preliminary injunction pursuant to Rule 65 of the Federal  
Rules of Civil Procedure enjoining defendants from enforcing  
its Christmas decorative lights order pending a full trial upon  
the merits and for a temporary restraining order in this action.
3. I have read the affidavit of Leco Electric Co.  
together with the exhibits annexed.
4. Myrtle Variety is a corporation  
existing pursuant to the laws of the State of New York and is  
engaged in the sale at retail of Christmas decorative lights,  
among other products. Myrtle Variety has been  
in business for over 15 years. I have checked our records

of reported accidents for the last 15 years and there is not one report of any injury relating to these decorative lights.

5. The period between November 1, 1975 and December 25, 1975 is the height of the retail selling season for Christmas. Our company has employed temporary sales personnel and anticipate considerable numbers of consumers in our stores during this entire period. During this period, our personnel do not have the time to allow volunteers to survey all of our stock of Christmas decorative lights. At this time of the season, our company cannot spare personnel whose function will be to inspect existing inventory. If a consumer deputy demonstrates what appears to be a potential hazard, our company will have no alternative but order that the product be removed from the shelves.

6. Since our company does not want to risk the penalties which may be incurred if it sells defective products and since time limitations preclude our own inspection or inspection by the manufacturer, our company will be compelled to remove these products from the shelves and eventually return them for credit.

7. Although these consumer deputies are not employees of defendant COMMISSION, they appear to be clothed with a degree of Commission authority and according to the Deputy Program reports will be filed with the Commission and official follow-up visits will follow. Such suggestions tend to have a coercive effect and most companies will not risk the penalties of non-compliance.



8. The action of defendant COMMISSION will certainly disrupt our retail sales and the sales of the manufacturers of Christmas decorative lights. If defendant really wanted to educate retailers, it should have acted in June or July when our personnel had time to comply.

9. The action of defendant COMMISSION in sending volunteers to retail stores during this crucial sales period is likely to cause great hardship to manufacturers of Christmas decorative lights.

*Jack Shuman*

Sworn to before me this

6 day of *Nov* 1975.

*Leo Druze*

LEO DRUZE  
Commissioner of Deeds  
City of New York 2-1533  
Certificate Filed in New York County  
Commission Expires March 1, 1976

-----x  
NATIONAL ORNAMENT & ELECTRIC LIGHT :  
CHRISTMAS ASSOCIATION, et al., :

Plaintiffs, :

-against- :

CONSUMER PRODUCT SAFETY COMMISSION, :  
RICHARD O. SIMPSON, Chairman, :  
LAWRENCE M. KUSHNER, BARBARA :  
HACKMAN FRANKLIN, CONSTANCE E. :  
NEWMAN, R. DAVID PITTLE, indi- :  
vidually, and as members of the :  
Commission, :

Defendants :  
-----x

AFFIDAVIT  
Civil Action No.

STATE OF NEW YORK )  
COUNTY OF NEW YORK) SS.:

DANIEL CHAUCER, being duly sworn, deposes and says:

1. I am a Consulting Engineer on product safety and product liability. I am retained on a part-time basis as Consulting Director of Electrical Testing Laboratories, Inc., and I am retained as an independent consultant on product safety by two national chains of retail stores. Prior thereto, I was a Vice- President and Director of the Bureau of Standards for Macy's.

2. I submit this affidavit in support of a motion for a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining defendants from enforcing its Christmas decorative lights order pending a full trial upon the merits and for a temporary restraining order in this action.

3. I have read the affidavit of JEROME NEUSTADT together with the exhibits annexed.



4. The period between November 1, 1975 and December 25, 1975 is the height of the retail selling season for Christmas. Retailers usually employ temporary sales personnel and anticipate considerable numbers of consumers in the stores during this entire period.

5. In my past capacity of Vice President of Macy's and Director of its Bureau of Standards and in my present capacity as consultant to retail organization, I would, should the suggested survey procedure contained in Exhibit 2 annexed to the Neustadt affidavit reveal the existence of bare wire, recommend the immediate removal of these sets from sale. I would take this action to avoid subjecting my client to adverse publicity and the potential civil and criminal sanctions under Section 15 of CPSA relating to sale of products which present substantial hazards.

6. The procedures set forth in Exhibit 2 would in my opinion cause the removal from the market place of safer sets having thicker insulation and conversely permit the sale of less safe sets using thinner less durable wire and insulation. The end result is inherent in the nature of the applied criteria.

7. The action of defendant COMMISSION in sending volunteers to retail stores during this crucial sales period is likely to cause great hardship to manufacturers of Christmas decorative lights.

Sworn to before me this

7<sup>th</sup> day of November, 1975.

*Daniel Chaucer*

DANIEL CHAUCER

*George P. [Signature]*

*Notary Public for the State of New York*

*My Comm. Expires 12/31/76*



A 77

Addressee

9010.83

TRANSMITTAL

DATE November 5, 1975

1. PURPOSE: This transmits the Consumer Deputy Program Retail Survey of Christmas Decorative Lights.

PAGE CONTROL CHART

REMOVE	DATED	INSERT	DATED
1. 9010 Table of Contents	9/02/75	1. 9010 Table of Contents	11/05/75
		2. Order 9010.83	

2. FILING INSTRUCTIONS: File this Order immediately and DESTROY THIS TRANSMITTAL.

Distribution: P

Initiated by: OFC

CPSC Form 176

GPO 888-846





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**Order**

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9010

GENERAL OPERATING PROCEDURES

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Distribution: P

Initiated by: OFC

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11/05/75

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9010

<u>ORDER NUMBER</u>	<u>SUBJECT</u>	<u>DATE</u>
9010.82	Consumer Deputy Program Child Resistant Packaging for Products Containing Sodium and/or Potassium Hydroxide	5/15/75
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Order

9010.83

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CONSUMER DEPUTY PROGRAM  
RETAIL SURVEY OF CHRISTMAS DECORATIVE LIGHTS

1. PURPOSE. This order provides guidelines for conducting a Consumer Deputy Program on Christmas Decorative lights. This program will utilize the talents of consumers and consumer groups to supplement CPSC's inspection efforts. The activity in this program will involve surveys of retail outlets for Christmas decorative lights which have been identified as containing defects which may present substantial hazards as defined in Section 15(a) of the Consumer Product Safety Act.
2. SCOPE. The procedures in this order are for the use of Area Office personnel who have the responsibility of conducting Consumer Deputy Programs and for those personnel who supervise these programs.
3. EFFECTIVE DATE. The program covered by this directive begins on November 1, 1975.
4. REFERENCES. The following items are reference materials for this order.
  - a. Order 9010.80, Utilization of Volunteers in Commission Surveillance Activities (Consumer Deputy Program).
  - b. Order 9020.91, Christmas Decorative Light Survey.
  - c. Order 9010.40, Substantial Product Hazard
  - d. Consumer Product Safety Act (Section 15).
5. FORMS. Supplies of the Consumer Deputy Report Forms will be provided by the Office of Field Coordination.
6. BACKGROUND. Each year during the Christmas Season, numerous reports of electrical shock, and fire or potential fire incidents associated with Christmas tree lights are

Distribution: P

Initiated by: OFC

CPSC Form 100

GPO 691-484

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Par 6

received. Last year, such reports resulted in the recall of certain product styles. Manufacturers/importers/retailers have been notified of means for identifying hazardous elements; have been urged to inspect existing stock and have been notified that the Commission would survey the marketplace. The Office of Product Defect Identification has initiated a survey in the Area Offices to identify and check available sources of Christmas decorative lights. The Bureau of Engineering Sciences has tested numerous samples of lights and OPDI has notified manufacturers and importers of the hazards and of their obligations under Section 15 of the Consumer Product Safety Act. This consumer deputy survey deals with alerting retailers to potential hazards of Christmas lights and to methods for checking their own stock for those hazards.

#### 7. OBJECTIVES.

a. To ascertain whether retailers are aware of possible hazards with Christmas decorative lights in their stock.

b. To inform retailers of the potential hazards of Christmas decorative lights and of methods for checking lights in stock for these hazards.

c. To provide feedback as to the types and volume of Christmas decorative lights seen at the retail level as compared to those identified by the field survey of manufacturers.

d. To make the public aware of potential hazards of certain Christmas decorative lights through publicity of this program.

#### 8. OPERATIONS.

a. This Consumer Deputy Program for a retail survey related to Christmas decorative lights will begin November 1, 1975, and end January 15, 1976.

b. Implementation and Administration

(1) Coordination of the program at the head-



quarters level will be the responsibility of the Office of Field Coordination. The Office of Product Defect Identification (OPDI) will give support as needed.

(2) Area Office Directors have the responsibility for the program at the Area Office level.

(3) All volunteers or volunteer groups must be willing to work within program guidelines and limitations as specified by CPSC (see Order 9010.80).

9. TRAINING. Train each person interested in participating in the program. No person will be considered as a consumer deputy without the complete training course as outlined in Appendix #1. OPDI will provide guidance for training, when necessary.

10. DEPUTY'S AUTHORITY. Impress upon the consumer volunteers that they have no authority beyond that of any consumer. The consumer deputy must not describe him/herself as an employee of CPSC (see Appendix 2). Volunteers should explain that they are checking for Christmas decorative lights and are explaining the potential hazards of decorative lights and will demonstrate methods for checking lights in stock for hazards (see Appendix 3).

11. SURVEYS. (See Appendix 4 for Suggested Survey Procedures).

a. Instruct consumer deputies to seek stores which carry Christmas decorative lights, i.e. department stores, specialty stores, hardware stores, supermarkets, variety stores, etc. Supply each deputy with an illustrated booklet, "What Can You Do Now and How Should You Do It?" (to be supplied by OFC) demonstrating the methods for checking lights for hazards and report forms (see Appendix 5). Also supply a set of Christmas lights which have had the hazards exposed as described in (b) below.

b. Instruct deputies to offer to demonstrate the hazards illustrated in the booklet to the store manager using a set of lights provided each deputy by CPSC for that purpose.

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c. Instruct the deputy that after the demonstration, to survey the display(s) of Christmas decorative lights are to be made. Record the complete labeling of each brand or style of light being offered for sale (see example in Appendix 4). Include if available:

- address.
- (1) The manufacturer/importer's name and
  - (2) The descriptive name.
  - (3) Code and/or style number.
  - (4) Catalog number.
  - (5) Place of manufacture.
  - (6) Type of light (miniature, regular, other, etc.)
  - (7) Suggested use - indoor, outdoor, both.

Note: The deputies are not to examine the lights on the shelves for defects.

d. Instruct deputies to survey only stock on the shelves. Deputies will not open packages on store shelves.

e. When deputies have completed the survey in a store or department an exit interview should be made thanking the manager for his/her time. The deputy should ask the manager if he/she plans to inspect the stock.

f. The manager should then be notified that the information on the survey will be turned over to the Consumer Product Safety Commission and that an official follow-up visit may result.

12. FUNDING. Funds for purchasing demonstration light sets will be provided by OFC when money for contracting is allotted. Due to the expense that could ensue, the number of deputies should be limited to no more than forty per Area Office. The maximum amount of contract funds to be allotted will be \$1,000 per Area Office.



Area Office. The maximum amount of contract funds to be allotted will be \$1,000 per Area Office.

13. PUBLICITY Issue a press release at the inception of the Consumer Deputy Program to identify the participating groups and explain the purposes of the program. A release on the national level will be made by the Office of Public Affairs at the beginning of the program. A sample press release developed by OPA is provided (see Appendix 6). If questions should arise concerning names of stores carrying violative products, the number of products in the store or other specific or proprietary information, inform the questioner that a Freedom of Information request must be made through the Office of the Secretary.

14. FOLLOW-UP. Follow-up activity will be at the direction of headquarters based on the Area Office's final reports. Lights surveyed will be compared by OFC with those identified by OPDI as having possible defects which could create a risk of injury. Samples will be collected at OPDI's discretion.

15. REPORT FORMS.

a. Instruct consumer deputies to prepare a report form for each store surveyed (Appendix 5).

b. Instruct consumer deputies to provide the following information on all reports:

(1) Name and address (including zip code) of the retail outlet; whether store was a member of a chain or privately owned.

(2) Name and title of person interviewed; store department; date.

(3) Whether the manager allowed the hazard identification demonstration to be given.

(4) List all the different brands on display, along with identification as described in section 6 of the Suggested Procedure for Conducting a Retail Survey (see Appendix 4).

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(5) Record whether the manager had checked his stock for potential hazards prior to the deputy's visit. If not, does he/she plan to do so now.

(6) Comments. If a manager does not allow the survey to be conducted and/or the demonstration to be given, note here giving any reasons.

16. FINAL REPORT. Submit a final report to the Office of Field Coordination, Attention: Catherine Downs, by close of business, January 30, 1976. Include the following in the report:

- a. Number of consumer deputies trained.
- b. Number of consumer deputies who reported.
- c. Name of consumer groups participating.
- d. Number of stores visited. Breakdown into chain versus privately owned.
- e. Number of kinds of lights surveyed (total number of different brands, not individual units or repeated brands).
- f. Name and address of stores which refused to allow a survey and/or demonstration and reason.
- g. Name of stores which had checked lights for hazards prior to deputies visit.
- h. Number of stores which agreed to check lights as a result of consumer deputy.
- i. Narrative should include any problems and/or successes in the following areas:
  - (1) Recruiting
  - (2) Training
  - (3) Complaints from retailers



booklet. (4) Adequacy of report form and illustrated

(5) Comments on overall program.

j. State involvement should be reported under a separate heading. Please list as follows:

(1) State agency involved.

(2) Number of stores visited.

(3) Number and name of brands of Christmas decorative lights identified.

(4) Names of stores which checked lights prior to visit.

(5) Number of stores which agreed to check lights.

Order No. \_\_\_\_\_  
APPENDIX 1. \_\_\_\_\_

## APPENDIX 1. SUGGESTED TRAINING COURSE OUTLINE

1. CPSC Overview
  - Mission
  - Background
  - Current Laws
2. Why We Need You
  - Number of Retail Stores vs. Number of Inspectors
  - Past Experience with Consumer Deputy Programs
3. Why Decorative Christmas Lights
  - Highly Seasonal
  - Environment - Exposure to Children, Pine Trees, Closed Homes
  - Electrical Shock
  - Fire Hazard
  - Many Different Brands and Manufacturers
  - (use examples for booklet or own experience)
4. How To Conduct a Survey
  - Introduction
  - Letter of Identification
  - How to Give a Demonstration (follow booklet step-by-step)
  - Report Forms (procedure for completing)
  - Exit Interview to Manager
  - Return of Reports Promptly
5. Logistics
  - Divide Geographical Area
  - What Stores to Survey
  - Where to Look in Store
6. Wrap-Up



## APPENDIX 2. SUGGESTED INTRODUCTION

Good Morning/Good Afternoon/Good Evening. My name is                     . I am a Consumer Deputy and I wish to conduct a survey of the decorative Christmas light supply in your store and to give you a demonstration for easily checking your Christmas light stock for possible hazards.

This survey is being conducted in local stores in cooperation with the U.S. Consumer Product Safety Commission. As this letter states (hand the individual the letter), I am not an employee of this agency and I do not have regulatory authority. I am a volunteer consumer interested in reducing the possibility of consumers being injured or their being subjected to an unnecessary hazard.

I would appreciate your cooperation in permitting me to survey your department and to give the demonstration on how to examine Christmas decorative lights for hazards.

November 5, 1975

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Appendix 3.0

## APPENDIX 3. LETTER OF INTRODUCTION

Dear Manager:

The individual presenting this letter is a consumer volunteer participating with the U.S. Consumer Product Safety Commission (CPSC) in a program to help make retailers aware of the potential hazards of Christmas decorative lights. The individual will identify him/herself and the organization represented. Under the Consumer Product Safety Act, CPSC has the authority to act against those products which present possible hazards. While there is no currently enforced Christmas light regulation, CPSC studies have shown that indeed, a hazard potential does exist. Manufacturers of lights which have been identified as potentially hazardous have been notified and advised of their responsibilities under the Consumer Product Safety Act.

Under this program volunteers are visiting retail establishments to help advise retailers of potential hazards by demonstrating an easy checking method. The volunteer would also like to check the Christmas light display and record the lights available in your store by brand. This information will help CPSC identify all manufacturers and/or importers of Christmas decorative lights.

The volunteer is not a CPSC employee and has no legal authority to demand or require that you take any specific action in this matter or to conduct any official inspection or investigation. The volunteer is acting entirely as a citizen volunteer in an attempt to increase consumer protection without resorting to legal enforcement action.

We believe that this program represents a means by which local consumers can work with local businesses to provide increased public protection and safety, and we, therefore, request your cooperation in allowing the volunteer to give the demonstration and to make



APPENDIX 3 - Continued

the survey. If you should have any questions about this project, please do not hesitate to telephone us.

Sincerely,

Area Office Director

November 5, 1975

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APPENDIX 4.

Class No.

Date

APPENDIX 4. SUGGESTED PROCEDURE FOR  
CONDUCTING A CONSUMER DEPUTY PROGRAM ON DECORATIVE  
CHRISTMAS LIGHTS

Before choosing the stores to survey, be sure to coordinate with other members of your groups to insure against "repeat" visits to any one store.

1. Upon entering the store locate the store or department manager. Introduce yourself giving the manager the letter of identification (see attached letter of introduction).
2. Ask permission to give the demonstration and to conduct the survey. If the manager refuses, thank him/her and leave the store noting on the report any reason that may have been given for the refusal. Offer to leave a copy of the booklet.
3. When permission is granted, complete the top of the report form including the store managers name.
4. Using the demonstration light set provided, show the manager step by step the hazards identified in the booklet. Explain to the manager that you are not a trained electrician and he/she is not expected to be either. The hazards identified are only visible checks which can easily be made. The hazards are:
  - a. Cracked Sockets. Danger - Shock and Burns to Fingers.
  - b. Add-on Connectors which Fall Apart. Danger --Electrical Shock and Tree Fire.
  - c. Exposed Bare Wires. Danger - Shock Hazard.
  - d. Exposed Contact or Electrode Wires from Base of Bulb. Shock Hazard.
  - e. When bulb is removed from socket, socket contact wire shoves through from bottom to top of socket exposing bare wire. Shock hazard.



5. Give the manager a copy of Fact Sheet No. 32, Section 15 CPSA along with the booklet.

6. After the demonstration, go to the section or department displaying Christmas decorative lights. Examine the lights on display writing down the descriptive labelling. Include the items as listed in the following example:

a. Importer and/or Manufacturer: (Name and Address):

C and C Manufacturers, Inc.  
10 West O Street  
Big City, State 00200

b. Name of Product: "10 Lite Angel Tree Top"

c. Code and/or Style Number: "Item 100"

d. Catalog Number: "CAT. NO. 1745"

e. Place of Manufacturing: "Made in Taiwan"

f. Number of Lights: "10"

g. Type of Light: "Miniature"

h. Suggested Use: "Indoor"

Not all boxes of lights will include all of the above.

7. When all lights have been listed on the report form (checked implies tested), return to the manager. Ask if he/she plans to check the lights in stock or if the lights had been checked prior to the deputy's visit.

8. Note what action the manager agrees to take, if any.

9. Thank the manager for her/his time before leaving the store.

9010.83Change No.Page No.

10. After the survey, complete all necessary information on the report form and within one week after survey mail the form to the Area Office (more than one at a time, if possible) in the envelope provided by your local Area Office.



CONSUMER DEPUTY PROGRAM  
CHRISTMAS DECORATIVE LIGHTS

Date:

Area Office:

Consumer Deputy's Name:		Organization:	
Store Name and Address:	Privately Owned	Person Interviewed & Title:	
	Chain		

1. Was the hazard identification demonstration given? Yes \_\_\_\_ No \_\_\_\_

2. List all different brands on display

Importer/ Manufacturer	Address	Product Name	Code/ Style No.	Cat. No.	Place Manuf.	Type	Use

3. Had the manager checked the Christmas decorative lights for potential hazards prior to the deputy's visit? Yes \_\_\_\_ No \_\_\_\_

4. Did the manager agree to make a check now? Yes \_\_\_\_ No \_\_\_\_

5. Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK  
3

A 95

4 -----x  
5 NATIONAL ORNAMENT & ELECTRIC LIGHT, :  
6 CHRISTMAS ASSOCIATION, INC., :  
7 LECO-ELECTRIC COMPANY, INC., :  
8 NOMA-WORLD WIDE, INC., :  
9 RADIANT GLASS FIBERS COMPANY, INC., :  
10 GILBERT MANUFACTURING COMPANY, INC. :  
11 DEPENDABLE ELECTRIC MFG. CO., INC., :  
12 ACLA, INC., BRONSON IMPORTS, LTD. :  
13 GEM ELECTRIC MANUFACTURING COMPANY, :  
14 LIBERTY BELL CHRISTMAS, :  
15 MINAMI INTERNATIONAL CORPORATION, :  
16 NATHAN SCHECHTER & SONS, :  
17 THE THOMAS COMPANY, INC., and :  
18 ZELL ELECTRIC MFG. COMPANY, INC., :  
19

75 C 1875

20 Plaintiffs, :  
21 :  
22

23 against :  
24 :  
25

26 CONSUMER PRODUCT SAFETY COMMISSION, :  
27 RICHARD O. SIMPSON, CHAIRMAN, :  
28 LAWRENCE M. KUSHNER, :  
29 BARBARA HACKMAN FRANKLIN, :  
30 CONSTANCE E. NEWMAN, :  
31 R. DAVID PITTLE, individually :  
32 and as members of the Commission :  
33

34 Defendants :  
35 :  
36 -----x

37 United States Courthouse  
38 Brooklyn, New York

39 November 10, 1975  
40 1:30 p.m.

41 B e f o r e:

42 HONORABLE JACOB MISHLER,

Ch. U.S.D.J.

43 SHELDON SILVERMAN  
44 Acting Official Court Reporter  
45



Appearances:

AARON LOCKER, Esq.  
and  
DAVID GREEN, Esq.  
Attorneys for Plaintiffs

RICHARD CARO, Esq.  
and  
DAVID SCHMELTZER, Esq.  
and  
NORMAN BARNETT, Esq.  
Attorneys for Defendants

1 THE COURT: In the case of National Ornament  
2 & Electric Light, et al. against Consumer Product  
3 Safety Commission et al., there was presented to  
4 me just about an hour ago voluminous papers submitted  
5 by both plaintiff and defendant on application for  
6 temporary restraining order.

7 We did have some discussion off the record,  
8 and I have asked the lawyers to recite the facts  
9 that are stipulated.

10 I would ask Mr. Locker to first recite the  
11 facts and the lawyers representing the Commission  
12 to state if they differ with any fact, and I'll  
13 ask the lawyers for the Commission to state any  
14 additional facts that they think are agreed to,  
15 and Mr. Locker can tell me whether he agrees to it.

16 Then we should have a stipulation.

17 MR. LOCKER: Your Honor, there appears to be  
18 some difference of opinion as to what is involved  
19 in the program. I quote now from the program  
20 itself. I have marked up several selective portions  
21 annexed to the complaint as Exhibit 1.

22 I have already gone through Paragraph 1,  
23 the purpose, substantial hazard.

24 Paragraph 4A refers to the substantial  
25 hazar regulations issued by the Commission and



1 the substantial hazard provision, Section 15 of  
2 the Consumer Product Safety Act appearing on page 1.

3 Appearing on page 3, dealing, in subparagraph  
4 11, dealing with the survey:

5 "Paragraph 11A. Supply each deputy,  
6 consumer deputy, with an illustrated booklet  
7 entitled, 'What you can do now and how you should  
8 do it.' Demonstrate the method for checking lights  
9 for hazards and report forms. Also supply a set  
10 of Christmas lights which have had the hazards  
11 exposed, described in B below. Instruct the  
12 deputies to offer to demonstrate hazards illustrated  
13 in the booklet to the store manager using a set of  
14 lights provided to each deputy by the C.P.S.B.  
15 for this purpose.

16 "Paragraph 11E. The deputy should ask the  
17 manager if he plans to inspect the stock. If the  
18 answer is yes, the deputy may also suggest that  
19 in the interest of public safety the lights which  
20 appear to have the hazards be removed from the  
21 shelves."

22 When I saw this, your Honor, I got a telegram  
23 off to the Commission objecting to the entire program  
24 and asking that they suspend a program which puts  
25 in the hand of untrained deputies, information,

1 including test methodology, directing them, untrained  
2 store managers, to in turn test their merchandise  
3 in the interest of the public safety, remove from  
4 the shelves--

5 THE COURT: Give me the facts.

6 MR. LOCKER: Generally, the Commission  
7 through general counsel contacted me and indicated  
8 they would remove this offensive statement from the  
9 program.

10 It is our position the thrust from the  
11 program nonetheless is directed to removal.

12 Let me go on to illustrate that point.

13 Page 13, last sentence: If questions  
14 should arise concerning the names of stores  
15 carrying violative products, the number of products  
16 in the store, other specific or proprietary infor-  
17 mation, inform the questioner that form of  
18 information request must be made through the office  
19 of the secretary.

20 You have an import of a violation where none  
21 in fact is adjudicated, no rules or hazards are  
22 subject to rule making to enable you to judge  
23 the violation has occurred.

24 Now we jump to the suggested training course  
25 outline for the deputies.



1 "Paragraph 4. How to Give a Demonstration.  
2 Follow the booklet step by step."  
3

4 In the booklet, Figure 3, there is the  
5 so-called test method to which we most strongly  
6 object. The crank test of 180 degrees in each  
7 direction to determine the hazard. With the  
8 concomitant position all we have is  
9 all this involves either publication of the  
10 Federal Register with opportunity to comment or  
11 a formal rule-making proceeding under 553 of  
12 the Administrative Procedure Act, or 554 adjudi-  
13 cative hearing.

14 MR. SCHMELTZER: With reference to instruc-  
15 tions to the consumer deputy--

16 MR. LOCKER: "Appendix 1, suggested training  
17 course outline. How to give a demonstration.  
18 Follow booklet step by step."

19 Three lines down. Suggested introduction,  
20 Appendix 2. "I would appreciate your cooperation  
21 in permitting me to survey your department and to  
22 give the demonstration on how to examine Christmas  
23 decorative lights for hazards."

24 Appendix 3. Letter of introduction. The  
25 volunteer, second paragraph, would also like to  
check the Christmas lights display and record the

1 lights available in your store by brand.

2 "Appendix 4. Procedure for conducting a  
3 consumer deputy program on Christmas lights."

4 This is Paragraph 4. "Using the demon-  
5 strater light set provided, show the manager step  
6 by step the hazards identified in the booklet."

7 The booklet contains the test procedure.

8 Same appendix. Item 7. "When all the  
9 lights have been listed on the report form, checked  
10 implies tested."

11 What does that mean? In essence, I have  
12 gone through the instructions outlining the deputy  
13 program. To me there's more than a mere survey  
14 here. There's a demonstration of a test procedure.

15 THE COURT: Let's go to the facts. What  
16 you're saying is an order was entered by the  
17 Commission directing that the volunteer deputies  
18 start performing these tests on November 1. That  
19 was delayed until today, November 10th.

20 MR. LOCKER: Correct.

21 THE COURT: They're ready to proceed in pur-  
22 suance of this order.

23 MR. LOCKER: Correct.

24 We made a distinction between mere  
25 investigation and information gathering and the



1 demonstration of tests, which we contend by rule,  
2 by statute, by constitution, should be subject to  
3 rule-making procedures, or at least publication of  
4 the register.

5 THE COURT: That's argument. The facts  
6 are that you represent plaintiffs who do \$50 million  
7 worth of Christmas light business. This is the  
8 scene: that if the program is carried out that it  
9 will destroy this Christmas business.

10 MR. LOCKER: That's correct.

11 THE COURT: Very few Christmas lights have  
12 been passed by any of these tests, have been found  
13 to be defective.

14 MR. LOCKER: Never been applied before.  
15 Just thought up for the benefit of this program.

16 THE COURT: How about the bare wires,  
17 cracked sockets? Does that constitute a very small  
18 percentage of Christmas lights sold?

19 MR. LOCKER: On the basis of the Commission's  
20 own injury information, yes.

21 THE COURT: Those are the facts. Do you  
22 agree with everything said so far, Mr. Smeltzer?

23 MR. SCHMELTZER: Not entirely. We would like  
24 to point out that the consumer deputies are not  
25 performing tests. They are showing a mock-up of

1 a set of lights which have exposed hazards and  
2 presenting to the retailer a booklet which tells  
3 them how to uncover exposed hazards.

4 THE COURT: You say only "exposed hazards."  
5 I understand that test of twisting the wire was  
6 one that was not exposed but would be after the test.

7 MR. SCHMELTZER: They're not running the test.  
8 They're showing the results of lights where the  
9 test has been run. It's a mock-up. They're not  
10 applying any force of their own.

11 THE COURT: Are there any other orders or  
12 directions given to these deputies before they  
13 start out?

14 MR. SCHMELTZER: Yes, quite a few. Very  
15 explicit. They make it very clear that they have  
16 no authority.

17 THE COURT: Are they all in the order or  
18 something in addition to the order?

19 MR. SCHMELTZER: All in the order, your Honor,  
20 appendices or part of the specific order. They  
21 could be more specific, but I have checked on the  
22 actual way the test, the deputies are instructed  
23 to construct the tests. There were no tests con-  
24 ducted.

25 THE COURT: How many volunteers do you have



1 that have been sworn in as deputies, I assume?

2 MR. SCHMELTZER: There's a method of select-  
3 ing, approximately forty in each of our area offices,  
4 which is 40 times--

5 MR. LOCKER: 560.

6 THE COURT: Throughout the country, all  
7 ready to go today?

8 MR. SCHMELTZER: And have been ready to go.

9 THE COURT: You say that these deputies have  
10 been selected. How? Volunteered?

11 MR. SCHMELTZER: Volunteers. I'm not quite  
12 sure of the selection method. They are drawn from  
13 a list, housewives, interested in consumer product  
14 safety. They are also given very clear instruc-  
15 tions on how to conduct the survey.

16 THE COURT: Do they have supervisors super-  
17 vising them?

18 MR. SCHMELTZER: Area offices supervised  
19 them.

20 THE COURT: What is the extent of that  
21 supervision?

22 MR. SCHMELTZER: A kind of seminar concept  
23 where it's explained to them how to conduct the  
24 survey.

25 THE COURT: Any field men going with

1 with the volunteers?

2 MR. SCHMELTZER: No. The field men inform  
3 these volunteers how to conduct the survey.

4 THE COURT: After the volunteer enters the  
5 retail store and finds some defective lights, does  
6 he make a written report?

7 MR. SCHMELTZER: He doesn't find defective  
8 lights. He shows the retailer what a defective  
9 light looks like.

10 THE COURT: Doesn't he go over merchandise?

11 MR. SCHMELTZER: No, he does go over the  
12 merchandise to record what's in stock, but he doesn't  
13 actually -- he's specifically instructed not to  
14 touch any of the retailer's merchandise.

15 THE COURT: What's the purpose of finding  
16 out the suppliers if you don't make an examination  
17 to determine whether it's defective or not?

18 MR. SCHMELTZER: Simultaneously, your Honor,  
19 there's a possibility that there could be a program  
20 of enforcement against the distributor or the  
21 manufacturer and in those cases it would be subject  
22 to the hearing provisions of the A.P.A.

23 THE COURT: A volunteer goes in. He doesn't  
24 look at the stock. He says, "Now, who supplies  
25 you?"



1                   Then the retailer sees the deputy write  
2 down the name.

3                   Now the first suspicion is that there's  
4 something wrong with that supplier. He's getting  
5 no information. You know who all the suppliers are.  
6 They're all plaintiffs here.

7                   Why do you have to know which supplier sells  
8 which light to which store?

9                   MR. SCHMELTZER: Because we have in our Act  
10 an information gathering tool which we need should  
11 we happen to determine that the product is a sub-  
12 stantial product hazard.

13                   THE COURT: That's all available through the  
14 manufacturer, telling you who the customers are  
15 and the distributors tell you who the retail stores  
16 are.

17                   In other words, I would discourage any con-  
18 duct which would indicate to the retailer that he's  
19 a potential defendant or he's doing something  
20 wrong or his supplier is doing something wrong.  
21 Retailers want to avoid any litigation.

22                   A retailer might make \$500 out of the entire  
23 deal, and he's thinking, "My God, if I have to hire  
24 a lawyer, there's \$2,000. I don't want any trouble.  
25 I won't handle it."

1 I have that with copyrighting infringement  
2 cases. It's very easy for a manufacturer of  
3 dolls and toys to ruin his competitor by just going  
4 into each store and telling the retailer that he's  
5 going to be a defendant in an action.

6 The fellow says, "I'll take it out. Don't  
7 sue me. I'll take it out."

8 That's what's being done here.

9 MR. SCHMELTZER: The consumer deputy scrupu-  
10 lously tries to avoid the implication there's any  
11 kind of enforcement authority that he has or that  
12 the retailer is subject to any enforcement  
13 authority.

14 If I can read you the letter of introduction  
15 spelled out here very clearly that he has no legal  
16 authority to demand or require to take any specific  
17 action in this matter or to conduct any official  
18 inspection or investigation.

19 Indeed, the retailer is not subject to any  
20 penalty under the consumer product safety.

21 THE COURT: You and I understand that. We're  
22 talking about a retailer selling Christmas lights.  
23 He sees someone who seems to have authority of the  
24 Government and he asks, "Who is your supplier?"

25 The first question the retailer asks, because



1 he's experienced, he's been around, "Why are they  
2 asking me if it means nothing? It must mean some-  
3 thing. I'd better get it out of my store."

4 I think the Government has a right to pro-  
5 ceed to protect the public when the public comes  
6 in contact with anything that is potentially  
7 dangerous.

8 The Government has taken a more active  
9 role in all lines to protect the public from all  
10 kinds of hazards. I don't think the Government  
11 intends to damage the business of manufacturers who  
12 are doing everything in their power to comply and  
13 present a safe product. I don't think--

14 If this is not carefully supervised, we  
15 know what the result will be. I wish I had more  
16 time.

17 Are these all the facts that you can think  
18 of that are material?

19 Do you agree that what Mr. Schmeltzer said  
20 is the program?

21 MR. LOCKER: No, sir. I have quoted from  
22 the program. Mr. Schmeltzer reads it and draws  
23 different inferences.

24 I construe a direction in the program.  
25 A deputy is supposed to demonstrate the hazards

1 in accordance with the booklet as meaning just  
2 that, involved in that is the demonstration of  
3 the test method, which is Figure 3 in the booklet.  
4

5 THE COURT: Would the Government be satis-  
6 fied if they say that the deputy is not to perform  
7 any tests, that they must make it clear this is  
8 just an investigatory procedure, just an informa-  
9 tion gathering procedure to the retailer? That the  
10 order would say that?

11 MR. SCHMELTZER: Absolutely.

12 MR. LOCKER: Test method should be deleted,  
13 test method prescribed.

14 What you can do now and how you can do it  
15 is left with the retailer.

16 THE COURT: The retailer should be allowed  
17 to make any tests.

18 MR. LOCKER: Any fair tests.

19 We contend the test is an improper one.

20 THE COURT: Even unfair tests. He might  
21 want to go beyond the standards fixed by the  
22 Commission. What I'm talking about is anything  
23 said or done or tests suggested should not in any  
24 way imply that the investigator has any reason to  
25 believe any product he has is defective. I think



1 that's the important thing.

2 MR. LOCKER: The booklet belies that when  
3 it states that it fails this test it's defective.  
4 I would have no objection if the booklet, when the  
5 booklet, if enjoined from distribution because it  
6 contains the test method or even Figure 3 in the  
7 booklet as well as the deputy's admonition not  
8 to engage in any test demonstration.

9 There's a broader question, also, your Honor,  
10 whether the chopped up light set -- I don't know  
11 what they're bringing out. I got a call from  
12 one of the plaintiffs in this action the Government  
13 wanted to buy fifty light sets to use as a demon-  
14 stration in its deputy program.

15 He was understandably aggravated. What are  
16 they going to do with it? I'm sure they would  
17 obliterate all sources of identification. How do  
18 we know what they're going to do to the light  
19 set to illustrate?

20 THE COURT: You can take the steam out of  
21 the Government's method by sending every retailer  
22 your own mock-up and say, in effect, "We think  
23 it's pretty good, but these things can happen."  
24 It can happen. It doesn't necessarily happen  
25 when the manufacturer makes them; it could happen

1 in transportation. It could happen in packing.  
2 It could happen in handling.  
3

4 MR. CARO: I wanted to point out the  
5 demonstration the volunteer would refer to is on  
6 the mock-up, not the retailer's profit.

7 MR. LOCKER: That's not clear from the  
8 instructions.

9 THE COURT: I want to hear it again.

10 MR. CARO: That the demonstration, the  
11 volunteer offers to do, if the retailer requests  
12 him to do, is on the mock-up, their sample.

13 THE COURT: You just told me the volunteer  
14 makes no tests. Now you're saying if the retailer  
15 is asked to make a test he or she makes it.

16 MR. CARO: Offers to show how the tests are  
17 performed on his sample so if the retailer would  
18 like to perform it on his own stock, the sample  
19 of his own stock, he's free to do so.

20 MR. LOCKER: I refer to Appendix 1, "How  
21 to Conduct a Survey. How to Give a demonstration.  
22 Follow booklet step by step." The booklet contains  
23 a step procedure in Figure 3.

24 MR. SCHMELTZER: Appendix 5 modifies that,  
25 describes using the demonstration lights, show the  
manager the hazards identified in the booklet. It



1 shows if this were the wire, the exposed part of  
2 the light.

3 MR. LOCKER: We have the booklet and light  
4 sets, both of which we object to.

5 I certainly know what's going on in the  
6 booklet. I object to that.

7 Then we have 7. "When all lights have been  
8 listed..."

9 THE COURT: Do you have a demonstration light  
10 with you?

11 MR. SCHMELTZER: No.

12 THE COURT: Gentlemen, I'm going to have to  
13 read the papers and if what you tell me is true,  
14 that all the material facts are stipulated, then  
15 I might call you when I go through them, ask you  
16 whether you stipulate to further facts.

17 I'll take your word over the phone, and if  
18 you say yes, I'll expect a letter.

19 We have twenty-five days until Christmas,  
20 and I would like either side to have the right  
21 to go up to the Court of Appeals immediately, and  
22 you can only do that on preliminary. I have to  
23 make fact findings.

24 MR. LOCKER: We have the question of the  
25 t.r.o. in the interim.

1 THE COURT: That's why I say I would like  
2 to--

3 MR. LOCKER: If these deputies get out there,  
4 there's no recalling them.

5 THE COURT: I don't know how I can stop it  
6 today.

7 I have a non-jury criminal trial. If you  
8 get to it early enough I'll start reading tonight.  
9 If I can get it by tomorrow, I will.

10 MR. LOCKER: When I spoke to general counsel  
11 on Friday and told them I was going to court on  
12 Friday, he asked me to wait until Monday, which is  
13 acceptable.

14 He in addition indicated that he would  
15 restrain the program, they have done so, until the  
16 court could hear this issue. I would ask that it's  
17 only fair to ask that they do the same thing until  
18 you can decide it.

19 THE COURT: I wish they would do it. We  
20 have terrible pressures. They're important to the  
21 litigants. I haven't even read the papers. It  
22 should take me an hour to read the papers. It  
23 should take me five hours to think about what you're  
24 saying in the papers. I'm a slow reader and a slow  
25 thinker. Why should I do the wrong thing if it



1 really isn't that important to the Government not  
2 to get it started today?

3 I know you have volunteers that are anxious  
4 to get on the war path, that's understandable.

5 MR. SCHMELTZER: It's the time, not the  
6 question of volunteers.

7 THE COURT: Mr. Locker says he's ready to  
8 come in Friday. You see, if he came in Friday  
9 afternoon, which is the original motion day, I'd  
10 have taken this home over the weekend and maybe  
11 I'd have known enough about it or felt I know enough  
12 about it so I can make an intelligent disposition.

13 You know that if I decide it and you go to  
14 the Court of Appeals they may take a week or ten  
15 days or a month to decide it. The trial judge is  
16 expected to decide it in a matter of ten minutes.  
17 That's why at times we seem so wrong and the  
18 Court of Appeals seems so right. It's just because  
19 they have more time to reverse themselves.

20 MR. LOCKER: Let's have an extension of the  
21 program by twenty-four hours.

22 THE COURT: I hope I can do it in twenty-  
23 four hours. It may be, what I heard about the next  
24 case I may be able to complete it in the afternoon.

25 MR. LOCKER: Or forty-eight hours.

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1 THE COURT: I may be able to do it tomorrow  
2 If I can't get the papers in final form, at  
3 least say denied or granted, and the opinion will  
4 follow in a day or two.

5 MR. SCHMELTZER: Is the court in session  
6 tomorrow?

7 THE COURT: I will be here working, yes,  
8 I expected to have a jury trial on, but the  
9 defendants' counsel and the Government says it's  
10 a nonjury case. It's a misdemeanor.

11 MR. LOCKER: Why not give the Court two  
12 days to make the decision.

13 THE COURT: I'll set the most urgent matter  
14 that I have on my desk aside and try to come to  
15 this one. I know what your problems are. You  
16 have a program all set and working on it.

17 MR. SCHMELTZER: This is the crucial time  
18 when the lights are on display.

19 MR. LOCKER: They don't start until the  
20 15th, or Thanksgiving to Christmas. Nobody rushes  
21 down to the store to buy Christmas lights now.

22 THE COURT: You see, they've got these  
23 volunteers and they have said to them November 1st  
24 Now it's demoralizing.

25 MR. LOCKER: They told them to hold.



1 THE COURT: Until the 10th. Now you say  
2 hold until the 11th, the 12th. It's not the time.  
3 It's just that these people feel they're rendering  
4 a public service. Now they're let down. There's  
5 some of that in there.

6 I don't blame the Government for feeling  
7 that way. I think that you should explain it to  
8 them that the Court just got it. It needs time  
9 to think about it. Hopefully we'll have a decision  
10 by tomorrow or Wednesday. It's only fair.

11 MR. LOCKER: Forty-eight hours?

12 MR. SCHMELTZER: It's obvious--

13 THE COURT: If I'm going to be wrong about  
14 it, I would like to do it with at least some kind  
15 of reason. It's distressing for me to feel I just  
16 came to a decision because I didn't have the time.  
17 Incidentally, we have been so pressed at times that  
18 we do it. It's a terrible admission to make, but  
19 that's the problem we have.

20 I think this is too important to these  
21 people who are plaintiffs not to at least have  
22 the Court's opinion instead of its curbstone  
23 reaction.

24 I think this is worthy of some kind of  
25 thought. Like most cases, I can see problems on

1 both sides. I can see the Government's interest;  
2 I can see the industry's concern. There should  
3 be a happy medium where the Government gets what it  
4 needs and at the same time industry is somewhat  
5 assured that they're not being chopped down or shot  
6 down in flight.

7 Incidentally, the supervision or the lack of  
8 supervision bothers me no end. You can have any  
9 number of orders saying, "Don't do this, that."  
10 If you have a bunch of eager beavers, they say,  
11 "This is what the order says, and I'm telling you  
12 you'd better be careful of those lights." Now  
13 are you going to stop that?

14 The fellow might come in and decide to  
15 become a purchaser just for the purpose of warning.  
16 You can't stop it either.

17 MR. LOCKER: No, no restriction on confi-  
18 dentiality.

19 THE COURT: We can only hope that the  
20 volunteers are honestly motivated and that they  
21 will follow the Government's supervision.

22 I'm convinced the Government officials  
23 want to do a fair job. I'm not concerned about  
24 them. I'm concerned about the volunteers.

25 MR. SCHMELTZER: I understand your problems



1 and I understand Mr. Locker's problems, but the  
2 Government's position is Mr. Locker has not made  
3 the case under the concept of Virginia Petroleum.  
4 He's not entitled to a t.r.o. The papers speak  
5 for themselves.

6 We'll ask you to consider them as soon  
7 as possible. We believe the cases laid out and  
8 very few of the criteria, if any, have been made  
9 under the Virginia Petroleum doctrine, which  
10 would allow a restraining order.

11 THE COURT: Let me ask you this: would you  
12 give me a transcript of this discussion? I can  
13 see what you said today.

14 MR. LOCKER: Surely.

15 THE COURT: I don't know whether the  
16 transcribers can get it to me tomorrow. I'll  
17 try to be through in court at 4:30. I'm waiting  
18 for a jury. They can go until all time into the  
19 night. I would work on this while I'm waiting for  
20 the jury. I would work on it tomorrow. I would  
21 hopefully have something, if not in final form,  
22 at least my final thoughts on it.

23 I would communicate my thoughts to counsel.

24 MR. LOCKER: I don't see why they won't  
25 consent to make this reasonable decision and

1 turn its deputies loose--

2 THE COURT: They are dealing with 540  
3 people.

4 MR. LOCKER: They are dealing with six  
5 programs before.

6 THE COURT: I would hope they wouldn't.  
7 I would hope they would at least wait until the  
8 close of business tomorrow when I have some chance  
9 to look at it. I don't like issuing a temporary  
10 restraining order without really fully understanding  
11 it or at least apparently understanding it. I do  
12 think the Government should say that we recognize  
13 the problems and will ask the supervisor not to  
14 send them out today, to be alerted for Wednesday  
15 morning. Hope I can get a decision by tomorrow.

16 There are cases. I'm reluctant to issue  
17 t.r.o's.

18 MR. LOCKER: What's involved is one day  
19 out of twenty-five. The deputies will be able  
20 to complete the program.

21 THE COURT: Mr. Locker, I believe if it  
22 weren't for the fact they have so many men through-  
23 out the country they wouldn't hesitate to give it  
24 to you. That's in the back of their minds.  
25 I can understand it. They have 544 volunteers.



1 MR. CARO: I asked the Government if they  
2 would consent to this if the plaintiffs would be  
3 willing to say they would not seek a stay pending  
4 appeal if they lost.

5 THE COURT: Why should they?

6 MR. CARO: They are asking us--

7 THE COURT: I may decide to grant or deny  
8 preliminarily and the reason I would do it is  
9 so that they would be able-- both parties would  
10 be able to go up, you see.

11 Why shouldn't they go up?

12 MR. CARO: They're asking the Government  
13 to stay its own program--

14 THE COURT: Don't ask for something like  
15 that, it's not fair. There are times when you  
16 might ask for a deal. You're really waiving  
17 their right to review it. Why should you ask for  
18 that?

19 If this were a matter I was familiar with,  
20 what I did all the time, I'd probably give it to  
21 you off the bench and tell you how I'm going.  
22 I really don't know how I'm going.

23 MR. SCHMELTZER: I don't think I have the  
24 authority to halt the program, but I'll make  
25 every attempt to get in touch with the chairman

1 who is personally involved with the program and ask  
2 him if it can be suspended until close of business  
3 tomorrow.

4 THE COURT: I'd appreciate that. Tell him  
5 I made that request. I'm very reluctant to issue  
6 a t.r.o. I don't know enough about it. I should  
7 have the balance of tonight and some time tomorrow  
8 to familiarize myself with it so I can make some  
9 intelligent decision.

10 MR. SCHMELTZER: These are crucial issues  
11 to the Commissioner as well.

12 THE COURT: If Mr. Schmeltzer asks for it  
13 and he can't, it's because they have gone so far  
14 they can't.

15 MR. LOCKER: Might I say one thing on that  
16 issue? It seems to me that with a program that  
17 is originally scheduled to start November 1, but  
18 which really didn't become potentially operative  
19 until today, with twenty-five days left, that the  
20 only way equitably to preserve the positions  
21 of the parties is to stay it for twenty-four hours.

22 Once these men get out there, we're not  
23 going to get them back. If they have twenty-four  
24 days instead of twenty-five days, they'll be able to  
25 do the job. They're not going to lose steam.



1 I've been through the consumer deputy  
2 program before. These are ardent, dedicated  
3 people. They're not going to lose faith in the  
4 Government.

5 THE COURT: Call the chairman from the  
6 courthouse. Let me know what his reaction is, will  
7 you, please?

8 (Recess)

9 MR. BARNETT: I can't verify this. All  
10 I heard over the telephone is someone summarizing  
11 what a piece of paper says.

12 MR. LOCKER: Your Honor, might I object  
13 to that? I have the Commission's injury statistics.

14 THE COURT: I'll take this statement. You  
15 gave me your prediction on what would happen.  
16 Why can't the Commission tell me what they believe  
17 will happen?

18 MR. BARNETT: This is a proffer. I can't  
19 verify this. I'm sure Mr. Locker would love to  
20 subject this to cross-examination. I'm sure to  
21 some extent he could. It's gathered from many  
22 sources. We have a nice reporting system. We  
23 monitor emergency rooms in hospitals. We also  
24 obtain information from fire departments, various  
25 ways, through the newspaper reports, even.

1 Sometimes in many instances, we follow this  
2 up with in-depth investigation with people in the  
3 field. The information which I have is from the  
4 calendar year 1974-1975, the past year. It's  
5 listed in four categories:

6 The first is potential shocks. We have  
7 six reports, consumer reports of potential shock  
8 hazards.

9 We have five reports of actual shock hazards.

10 The reports, I understand, are from the  
11 range of mild through almost electrocuted.

12 We have sixteen reports of potential fires  
13 caused by melting of lights, sparking, possible  
14 exploding bulbs.

15 Fire damage. We have actual reports of  
16 twenty-three incidents and a very telling statistic,  
17 we have information there were eight fatalities  
18 resulting from these fires. I understand in one  
19 incident a whole house burned down.

20 It's also my understanding of these reports  
21 thirteen in-depth investigations were conducted,  
22 thereby in those instances we will have specific  
23 reports of what the investigator found.

24 THE COURT: Do you have the underlying  
25 material someplace?



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1 MR. BARNETT: Yes, in Washington.

2 THE COURT: Would you make those available  
3 to Mr. Locker?

4 MR. BARNETT: I will.

5 THE COURT: As soon as possible.

6 MR. BARNETT: I wonder how we can get it  
7 before the Court in time to do something. We ad-  
8 vised the chairman of your Honor's request that we  
9 hold the program off. He did express some dis-  
10 pleasure of that. He indicated that any delay  
11 is certainly going to create a problem and could  
12 result in a serious safety problem, but he did  
13 say that he would accede to a request of the Court  
14 to extend the implementation for twenty-four  
15 hours.

16 THE COURT: That gives me one day.

17 Were these statistics you gave me national?

18 MR. BARNETT: Yes. This is all we found out.  
19 We have only representative reports. We obviously  
20 don't get all the statistics. This is just what  
21 we received.

22 THE COURT: You think of the billions of  
23 lights around--

24 MR. LOCKER: That's correct, and no one is  
25 using lights now.

1 THE COURT: This is just a sample.

2 MR. LOCKER: I have the Government  
3 statistics. I have requested them.

4 THE COURT: I would think if I were the  
5 plaintiff, I would offer these statistics.

6 MR. LOCKER: I intend to.

7 THE COURT: I would expect that on a nation-  
8 wide basis we would have a hundred fatalities,  
9 thousands of shocks, but of course these are only  
10 those that are reported.

11 MR. BARNETT: These are what we know about.

12 MR. LOCKER: Let me say something on the  
13 way they are reported.

14 THE COURT: I don't think it hurts the  
15 plaintiff at all, sir.

16 MR. BARNETT: The other point, as far as  
17 what the deputies instructions are--

18 THE COURT: I might say that ultimately,  
19 if the Government succeeds in fixing standards and  
20 they become nationwide and they are practiced and  
21 used, you're still going to get a few fatalities,  
22 fires, shocks.

23 MR. BARNETT: We're attempting to promote  
24 product safety. We've only been in existence for  
25 two years. We can't set a standard on every product.



1 We don't have the staff or funding to do so.

2 We're doing the best we can. This is an area which  
3 is seasonal, as you're aware, that we get into it.

4 I would like to advise the Court I understand  
5 your concern about the fact the deputies, the  
6 instructions, that the deputies may go beyond their  
7 authority, we will issue a directive to explain  
8 to the deputies that the directive of the Commission  
9 which is in the pleadings has to be followed to  
10 the letter.

11 THE COURT: I think they must be instructed  
12 affirmatively that the retailer must be advised  
13 that the questioning in no way indicates that the  
14 product is defective or the manufacturer is under  
15 investigation.

16 I think it's the first thing that comes to  
17 mind when a Government investigator comes into  
18 a store. I think if it's clear, made clear to the  
19 retailer that this is just information gathering,  
20 just want to get statistics over the entire  
21 country, how many instances that there are defective  
22 materials offered--

23 MR. BARNETT: I believe we can put together  
24 a directive expressing that. I think if the Chair-  
25 man of the agency issues that directive, I'm sure

1 there would be very good compliance with it.

2 THE COURT: That's important. To say some-  
3 thing affirmatively. There's no suspicion, no  
4 proof, that any product now in the store is  
5 defective or the manufacturer is sending defective  
6 products. It's just a statistical study for future  
7 guidance.

8 MR. BARNETT: We can make that instruction.

9 MR. LOCKER: Without deletion of the test  
10 method.

11 THE COURT: I'll look at it. That's why  
12 I need the time.

13 MR. LOCKER: I appreciate that.

14 MR. BARNETT: I'd be perfectly willing to  
15 attempt to sit down, put together some of your  
16 Honor's reservations, and try to instruct in a  
17 letter, the cover letter which goes with the deputy  
18 out into the field, which he gives to the retailer.  
19 In that letter make specific, more specific  
20 representations as to exactly what his authority is,  
21 what the program is about.

22 THE COURT: If you can get something to me  
23 like that for tomorrow I'd appreciate it.

24 I thank you for your cooperation.

25 MR. LOCKER: Thank you.

---



CIS:RPC:ec  
P. #752355

November 11, 1975

Honorable Jacob Mishler, Chief Judge  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: National Ornament & Electric Light Christmas  
Ass'n., Inc. v. Consumer Product Safety Comm'n.,  
Civil Action No. 75 C 1874

---

Dear Judge Mishler:

Enclosed herewith is the directive, authorized by the  
Chairman of the Consumer Products Safety Commission,  
which you requested, in connection with the stipulation  
of the parties respecting the nature of the Consumer  
Deputy Program Retail Survey of Christmas Decorative Lights.

We wish to again state that the Government does not  
accede to assertions of irreparable injury by plaintiffs  
in their pleadings and in the affidavits submitted in  
support of a Temporary Restraining Order. Should it be-  
come necessary to reach this issue, the Government reserves  
the right to cross examine the affiants and to submit  
evidence to the contrary.

Very truly yours,

DAVID G. TRAGER  
United States Attorney

By:

---

RICHARD P. CARO  
Assistant U. S. Attorney

Encl.  
a/s

A 129

Honorable Jacob Mishler

November 11, 1975

cc. w/encl.:

Aberman, Greene & Locher  
Attorneys for Plaintiffs  
540 Madison Avenue  
New York, New York 10022



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

A 130

----- X  
NATIONAL ORNAMENT and ELECTRIC  
LIGHT CHRISTMAS ASS'N, INC.,  
et al.,

Plaintiffs,

- against -

CONSUMER PRODUCT SAFETY COMM'N,  
et al.,

Defendants.  
----- X

APPLICATION FOR  
STAY OF  
INJUNCTION PENDING  
APPEAL

Civil Action  
No. 75 C 1814

Upon the affidavit of Richard O. Simpson, sworn to the day of November, 1975, and upon the complaint and all other papers filed and proceedings heretofore had herein, the defendants move this Court pursuant to Rule 62(c), Federal Rules of Civil Procedure, for an order staying the operation of the injunction entered herein on November 12, 1975, pending appeal to the United States Court of Appeals for the Second Circuit and until final determination thereof for the following reasons:

(1) On November 12, 1975, defendants duly served and filed a notice of appeal from the final order of this Court.

(2) Defendants' appeal involves difficult and novel questions of law which are of fundamental importance to the Commission's entire safety program, and respecting which the Court of Appeals is likely to reverse this court,

(3) Unless, pending defendants' appeal, said order of the court is stayed, the Consumer Deputy Program Retail Survey of Christmas Decorative Lights will be materially and adversely affected for the 1975 holiday season, because all five suggested methods for detecting possible hazardous defects in christmas tree lights in the booklet are essential to the effectiveness of the Program. It is for this reason that the Program has been temporarily suspended pending appeal.

( ) There has not been a stipulation or finding that plaintiffs will be irreparably injured should the Program go forward.

(S) Finally, a stay of the injunction pending appeal is clearly in the public interest.

Dated: Brooklyn, New York  
November , 1975

DAVID G. TRAGER  
United States Attorney  
Eastern District of New York  
Attorney for Defendants  
225 Cadman Plaza East  
Brooklyn, New York 11201

by:

RICHARD P. CARO  
Assistant United States Attorney



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X

NATIONAL ORNAMENT and ELECTRIC	:	AFFIDAVIT IN
LIGHT CHRISTMAS ASS'N, INC.,	:	SUPPORT OF SEAL
et al.,	:	OF INJUNCTION
	:	<u>PENDING APPEAL</u>
Plaintiffs,		
- against	:	Civil Action
	:	No. 75 C 1874
CONSUMER PRODUCT SAFETY COMM'N	:	
et al.,	:	
Defendants.	:	

----- X

WASHINGTON )  
 ) SS.:  
DISTRICT OF COLUMBIA )

RICHARD O. SIMPSON, being duly sworn deposes and  
says:

1. I am the Chairman of the Consumer Product Safety  
Commission, an independent regulatory agency of the United  
States Government.

2. On November 12, 1975, the district court pre-  
liminarily enjoined the Commission from distributing certain  
booklets containing various checking methods for potential de-  
fects in decorative Christmas lights. The booklets were to be  
distributed in conjunction with the Commission's Consumer Deputy  
Christmas Decorative Lights Program. This program involves the  
use of trained volunteers by the Commission during the current  
pre-Christmas season advising retailers of common potential  
defects associated with Christmas decorative lights which could  
result in fire or electrical shock hazards.

3. As a result of the injunction issued by the district  
court, the Commission's program has been effectively disabled.  
The district court order enjoins the deputies from advising the  
retailers of simple checking procedures for 3 of the 5 potential  
defects which the Commission has identified. The elimination

of these checking procedures, as well as the problems of retraining the volunteers and revising the literature, has the result of decreasing the effectiveness of the entire program.

4. Christmas decorative lights are generally only marketed during the months of November and December. This is the only period during which Commission's Program can effectively operate. As a result of the district court's order the Consumer Deputy Christmas Lights Program has been temporarily suspended. Each day the program is delayed closer to Christmas, the less effective the program becomes. Accordingly, unless the injunction is stayed pending appellate review the district court order will have achieved appellees' purpose of disabling the entire effort.

5. The decision of the district court which would require the Commission to promulgate a product safety standard each and every time it seeks to disseminate cautionary information on product safety which involves a simple checking procedure is clearly wrong and completely misinterprets the Consumer Product Safety Act ("CPSA"). The CPSA provides three basic ways for the Commission to combat the great number of accidents, injuries and deaths that occur each year as a result of the use of consumer products. First the Commission is required to disseminate information to the public to inform them on how to avoid injury and accidents, including warnings of potential defects in consumer products; second, the commission is to establish consumer product safety standards for the future manufacture of such products, and finally to take the necessary enforcement actions to protect the public against products already on the market place which present substantial or imminent hazards.

6. That the authority of the Commission to describe possible defects in consumer products and suggest methods for



discerning their existence is a function separate and distinct from its authority to promulgate product safety standards is readily ascertainable from the differences in purpose of each type of agency action and from the very complexity and length of the standard setting process. The CPSC envisions consumer product safety standards promulgated under Sections 7 and 9 of the CPSA to be final determinations after extensive research and study of the safest possible manner to design and market a consumer product. The process is complex and lengthy. Under the statutory provisions the process is envisioned as ordinarily taking between 270 and 480 days or longer. In actual practice, the time period for the development and issuance of standards under the CPSA has proven to be unrealistically short. The Commission has to date commenced standard development proceedings for six products; swimming pool slides, architectural glass, power lawn mowers, bookmatches, television sets, and aluminum wire. In each standard development proceeding undertaken thus far, it has been necessary for the Commission to provide additional time for development of the standard and in those cases where a developed standard has been submitted to the Commission to extend the period within which it must propose a standard. Due to the complexity of the development process, including necessary staff analysis, review and modification of standards submitted to the Commission, and analysis and consideration of comments on proposed standard as a result of comments, the Commission has not yet issued any consumer product safety standards under the CPSA.

7. Safety standards once established are mandatory and can only have prospective application. They cannot apply to products already manufactured.

8. In contrast, Congress expressly empowered and instructed the Commission to disseminate information under Section 5 of the CPSA, inter alia, to help the public become aware of the potential hazards posed by existing products. In the past two and one-half years, the Commission has issued over

100 brochures, booklets, "fact sheets", posters, bumper stickers, movies, slide shows, television and radio spot announcements warning consumers of the myriad dangers associated with consumer products. Many of the dangers warned against are not visibly apparent but are readily disclosed by simple checking procedures such as those included in the booklet on Christmas tree lights. The descriptions of such possible defects and suggested methods for detecting their existence do not constitute under the CPSA safety standards either qualitatively or functionally, since they do not represent either the level or scope of safety required by a standard and they are not manufacturing requirements which must be satisfied before the products are marketed. Establishment of a product safety standard for each and every simple and obvious checking methods, which the district court has apparently found required, would simply cripple the Commission's ability to warn the public of safety hazards posed by products already on the markets.

9. The distinction raised by the district court between defects visually apparent and those which can be disclosed from checking procedures completely destroys the ability as well as any flexibility by the Commission in providing its warnings. The result will undoubtedly impede the entire product safety effort of the agency. The effect of the distinction can be vividly illustrated from a recent case. In 1974 the Commission obtained information concerning an electrocution allegedly caused by an inexpensive mechanics trouble light. The light handle was constructed of a soft rubber material which when squeezed could cause the user to make contact with an electrically charged plug receptacle contained in the handle. The Commission in this instance brought an "imminent hazard action" under section 12 of the CPSA for immediate remedial action. The Chief Judge of the United States District Court for the District of Columbia, at the hearing in the matter characterized the trouble light as



a "patent death-trap". Thereafter he granted the Commission's request for declaratory and injunctive relief. See United States Consumer Product Safety Commission v. A.K. Electric, Corp., et al. Civil Action No. 74-1206 (Sept. 9, 1974) and CPSC "Fact Sheet" No. 60 attached hereto.

10. Under the reasoning expressed in the decision of the district court, regardless of how dangerous the hazard or how many deaths caused, the Commission could not make any effort whatsoever to warn the public of a simple squeezing test which could disclose a potential defect in any trouble lights of other manufacturers on the market because of the lack of a product safety standard. The only remedy which the district court would leave the Commission would be to undertake adjudicative or Court action against each and every manufacturer in the industry. In the trouble light case this would have been impossible. The lights in question were very inexpensive and in many cases did not even have any manufacturers identification. It is inconceivable that Congress could have intended to restrict the Commission from warning the public of this danger.

11. The distinction raised by the district court's decision would also place into serious question many other product safety informational publications of the Commission. A few examples can be seen from the attached "Fact Sheets" on power saws and Christmas decorations (Nos. 7 and 20). The Fact Sheet on the power saws describes a simple test to determine if a saw contains a braking device (page 2):

"Test the saw to see if the blade stops as soon as possible after power is turned off. (Dynamic braking is an added safety feature.)"

The Christmas decorations Fact Sheet includes the following test procedure to determine the dryness of a Christmas tree (page 1):

"Before you buy a cut tree, check it for freshness. There are several things you can look for. Brittle branches and shedding needles are a sign of dryness; fresh needles bent between the fingers won't break. Tap the tree lightly on the ground -- if many needles fall off, the tree is too dry. Don't depend on a nice green color -- trees may be sprayed green to improve their appearance.

These are merely samples of the simple and obvious testing procedures of which the Commission has continuously been distributing to the public. Along with the trouble light example, they readily demonstrate the difficulty for the Commission in warning the public of product hazards. In sum if the decision below is sustained, the Commission's informational activities would have to be thoroughly re-examined and restructured, and perhaps even curtailed.

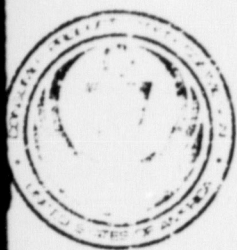
*Richard O. Simpson*

RICHARD O. SIMPSON  
Chairman  
Consumer Product Safety Commission

Subscribed and Sworn to  
before me this 13th day of  
November 1975

*Kathryn Beaty*  
KATHRYN BEATY  
Notary Public  
District of Columbia





# DO NOT CONNECT

U.S. CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, D.C. 20507

No. 50: "Trouble Light" Shock Hazards

The U.S. Consumer Product Safety Commission has determined that 200,000 household "trouble lights" or "mechanics' lights" sold in the past year pose an imminent danger of serious or fatal electric shock.

The death of a man in Florida that apparently involved a "trouble light" alerted the Commission to the potential hazard.

The "trouble light" was manufactured by A.K. Electric Corporation, Brooklyn, New York. However, none of the lights bears the name of the manufacturer or any other distinguishing labels or numbers. The only way to recognize these lights is by their extremely flexible plastic handles. In fact, the handles bend so easily that they permit you to contact the metal conductors in the female receptacle and present a potential danger of electric shock.

Metal conductor in  
the female  
receptacle

There is no safe way to use one of these "trouble lights." You should cease use immediately, taking care not to touch any metal parts when disconnecting the light from the electrical outlet. If you want to buy another trouble light, be sure to choose one that has a sturdy handle and does not permit you to touch any metal parts that may carry electric current.

## "trouble light" -- 2

The "trouble lights" were sold for about \$1.50 by many large chain stores across the country. The following is a partial list of stores which sold the lights:

Able 2 Products Co., Cassville, Missouri  
Action Industries/Dollarama, Inc., Cheswick, Pa.  
Alco, Abilene, Kansas  
Associated Hardware Supply Co., Cheswick, Pa.  
Ayr-Way, Indianapolis, Ind.  
BI-LO Inc., Greenville, S.C.  
Business Envelope Mfg. Co., Clinton, Tenn.  
Firestone Tire and Rubber Co., Akron, Ohio  
Food Fair, Philadelphia, Pa.  
Glossers Stores, Inc., Greensburg, Pa.  
Hardgoods Warehouse, Newton Center, Massachusetts  
Howard-Gibco Corp., Texarkana, Texas  
Howard Brothers of Houma Inc., Monroe, La.  
Jamesway Corp., Secaucus, N.J.  
J.Z. Sales, Plainview, New York  
KenMar Electric Co., San Francisco, Calif.  
KenMar Electronics, Compton, Calif.  
Korvette's, New York, New York  
Mason's Stores, Inc., New York, New York  
Nash Hardware Co., Ft. Worth, Texas  
Perry Dist. Inc., Pontiac, Michigan  
Richway Stores, Atlanta, Ga.  
Rose's Stores, Inc., Henderson, N.C.  
S. Berin Sales, Los Angeles, Calif.  
Thrift Dollar Store, Louisville, Ky.  
Treasury  
Uncle Bill/Ontario, Maple Heights, Ohio  
Value-Mart Inc., Hattiesburg, Miss.  
Walmart Stores Inc., Bentonville, Arkansas  
W.E. Aubuchon, Inc., Westminster, Mass.  
Woolco, Apparel Buying Associates, Inc., Secaucus, N.J.  
Zayre Corp., Framingham, Mass.

You should return your "trouble light" to the store where it was purchased for a refund.

To report a product hazard or a product-related injury, write to the U.S. Consumer Product Safety Commission, Washington, D.C. 20207. In the continental United States, call the toll-free safety hot line 800-638-2666. Maryland residents only, call 800-492-2937.

August 1974





# FACT

# SHEET

A 140

U.S. CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, D.C. 20207

## NO. 7: POWER SAWS (EXCLUDING CHAIN SAWS)

The U.S. Consumer Product Safety Commission estimates that approximately 37,000 injuries associated with power saws are serious enough to require hospital emergency room treatment each year. The following cases are taken from CPSC investigation files:

JAMES WAS "TOPPING" A GATE POST OF A CEDAR REDWOOD FENCE WITH HIS 15-POUND SAW. HE TURNED OFF THE SAW AND HELD IT IN ONE HAND AS HE LOWERED IT. THE BLADE CONTINUED TO SPIN, AND THE BLADE GUARD STAYED IN A RETRACTED POSITION. THE BLADE HIT HIS LEG, LACERATING HIS KNEE.

MIKE WAS RIPPING A BOARD WITH HIS TABLE SAW. AT LEAST ONE-HALF INCH OF BLADE WAS ABOVE THE TOCK. THE BLADE HIT A KNOT IN THE BOARD AND KICKED THE BOARD OUT. MIKE'S HAND WENT INTO THE BLADE, AND TWO OF HIS FINGERS WERE AMPUTATED.

TERRY COMPLETED HIS CUT AND TURNED OFF HIS TABLE SAW. HE REACHED ACROSS THE SAW, BUT THE BLADE CONTINUED TO ROTATE. HIS THUMB AND TWO FINGERS WERE AMPUTATED.

BARRY WAS RIPPING A WALNUT BOARD USING A PUSH STICK. AS HE COMPLETED THE CUT, HE SLIPPED ON THE SAWDUST ON THE FLOOR. HIS FREE HAND HIT THE BLADE, AND HIS FINGERS WERE SEVERELY LACERATED.

LARRY WAS KNEELING IN WET GRASS, CUTTING FENCE POSTS. THE INSULATION OF THE LEAD FROM THE "FIELD COIL" OF HIS SAW TO THE SWITCH WAS BROKEN. HE RECEIVED A FATAL ELECTRIC SHOCK.

These case histories illustrate the major accident patterns associated with power saws. They are:

1. *Contact with the blade*, usually through one of these causes:

- a. A blade guard either was not on the saw, had been removed, or was malfunctioning. The blade guard on portable circular saws can malfunction by staying in a retracted position after completion of the cut.
- b. Kickback can occur when the blade jams or binds in the wood and throws the saw towards the operator with portable circular saws, or the wood towards the operator with stationary equipment. Binding can be caused by a dull blade, warped or knotted wood, or forcing the cut.
- c. The blade continues rotating after the power is turned off.
- d. Slippery floors, sometimes through accumulation of sawdust or scrap, can lead to a fall onto the blade.

2. *Electric Shock* -- Saws should be double insulated or have a three-prong grounded plug. Many homes, however, don't have wall outlets to accommodate three-prong plugs, and the user cannot be assured of a proper ground connection.

Carelessness or inexperience of the operator also accounts for many accidental contacts with the blade.

The U.S. Consumer Product Safety Commission offers the following suggestions for the purchase and safe use of power saws:

### 1. *Selecting the Saw*

- A blade guard is a necessity! Buy a saw with the guard you feel most comfortable using, and *keep it on the saw*. Some types of saws, such as sabre saws, cannot be designed with a guard; be especially careful to avoid contact with the blade.
- Ask a salesman for anti-kickback fingers on table saws, to help prevent kickback.
- Test the saw to see if the blade stops as soon as possible after power is turned off. (Dynamic braking is an added safety feature.)
- Make sure your saw is protected against shock by double-insulation or a three-prong grounded plug. Three-prong plugs must be used with a three-prong socket for safety.

### 2. *Using the Saw*

- Read the instruction manual carefully before use.
- A Ground Fault Circuit Interrupter installed in the electrical circuit supplying power for the saw also reduces potential shocks from saws or other electrical tools and appliances by cutting off all electrical power in the circuit when it senses abnormal circuit flow.
- Keep the blade guard and other safety devices in place at all times.
- Use a push stick during ripping cuts with stationary saws to keep hands away from blade.
- Do not force the cut; let the saw operate at its own speed.
- Never let the saw run unattended.
- Wait until motor is off, blade stopped, and saw unplugged or locked before repairing or cleaning around the saw.
- Keep children away from work area at all times. *Never* allow them to operate power saws.
- Use appropriate socket for three-prong plug or use a properly grounded adapter. Don't remove the third prong.
- Dress appropriately: wear closed, sturdy shoes and safety glasses; don't wear loose clothing or jewelry that may catch in moving parts.
- To help prevent shock, don't use a saw in a damp or wet area.
- Use rubber or other non-slip matting around the work area. Keep the floor clean.
- Have good overall lighting in the work area.
- Keep the electric cord out of the way of cutting when using a portable saw.
- Keep the widest, heaviest part of a portable saw's base on the supported part of the material being cut.

### 3. *Maintaining and Storing the Saw*

- When repairing or replacing a three-prong grounded plug, be certain the wires are connected correctly; otherwise, the saw could become a shock hazard. Only qualified electricians should repair plugs.



- Keep the blade sharp, clean and lubricated.
- Remove gum build-up on blade (it could cause binding) by rubbing blade with steel wool saturated with ammonia.
- Frequently inspect and, if necessary, replace the carbon brushes on brush-type motors before they wear low.
- Inspect blade for cracks and replace promptly. A cracked blade may indicate a problem in the saw's operation.
- Store saws in a high or locked place, away from children.
- Lock motor switches of table saws when finished working to prevent children from turning on saws.

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To report a product hazard or a product-related injury, write to the U.S. Consumer Product Safety Commission, Washington, D.C. 20207. In the continental United States, call the toll-free safety hot line 800-638-2666. Maryland residents only, call 800-492-2937.

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*Revised June 1975*



# FACT SHEET

U.S. CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, D.C. 20207

No. 40: Christmas Decorations

Each year thousands of American families suffer needless injuries, loss of life and destruction of property due to accidents involving holiday decorations. Many of these accidents, from the child taken to a hospital after swallowing pieces of a broken ornament to the family burned to death in a home fire after a Christmas tree ignited, can be traced to unsafe or improperly used decorations. The U. S. Consumer Product Safety Commission estimates that this year 3500 individuals will be treated in hospital emergency rooms for injuries associated with holiday decorations.

To help you enjoy a safe holiday, the Commission offers the following advice:

**TREES.** If you are planning to buy a natural tree, the most important safety factor is its freshness. The higher the moisture content of the tree, the less likely it is to dry out and become a serious fire hazard.

One way to insure that a tree is fresh is to cut it yourself. Tree farms are within a short driving distance in many locations.

Before you buy a cut tree, check it for freshness. There are several things you can look for. Brittle branches and shedding needles are a sign of dryness: fresh needles bent between the fingers won't break. Tap the tree lightly on the ground--if many needles fall off, the tree is too dry. Don't depend on a nice green color--trees may be sprayed green to improve their appearance.

When you bring a tree home, keep it outside (if possible) until you're ready to decorate it. Keep its base covered in water or snow. When the tree is brought in, cut the butt end diagonally one or two inches above the original cut. Place the tree in a sturdy, stable holder with a wide base. For additional stability for a large tree, fasten it to the wall or ceiling with thin wire.

Fill the holder with water until the cut line is covered and keep the water at this level while the tree is in use.

Set your tree up a good distance from any heat source. Don't rely on any do-it-yourself external flameproofing treatments since they are virtually impossible to apply correctly at home.

Dispose of the tree when the needles begin to fall off in large quantities. This is a sign that it is becoming dangerously dry.

Metal trees present no fire hazard in themselves. However, they can be the source of a serious shock hazard if electric lights are attached to the tree. Sharp metal edges may cut the cord insulation; the metal needles might touch an electrically



charged component. Either way, the whole tree will become electrically charged, and anyone touching the tree and a grounded object at the same time could receive a severe shock.

The only way to illuminate a metal tree safely is to use colored floodlights placed in different areas of the room. Since the floodlights can become quite hot, they should be positioned where children can't come in contact with them.

If you purchase a plastic tree, it should be made of fire-resistant material. This does not mean that the tree will not burn, but only that it will not catch fire easily. As with natural trees, keep away from heat sources.

**LIGHTING.** Purchase lights that have been checked for safety. Look for the UL label of Underwriters' Laboratories.

Check your tree lights and outdoor lights each year before you use them. Look for frayed wires, loose connections, broken or cracked sockets and spots where bare wire is exposed. Any set that is damaged should be thrown out or repaired. Careful handling of these products during unpacking, decorating and repacking will lessen the chance of hazardous damage.

All lights should be fastened securely to the tree. No light bulbs should come into direct contact with the needles or branches. Curtains and other flammable materials should also be kept away from bulbs.

Don't overload extension cords. Don't put more than three sets of lights on any extension cord. Keep the connection joints away from the water supply of a live tree.

Any outdoor lights should be weatherproof and clearly identified as designed for outdoor use. Don't try to use indoor lights for outdoor lighting. Remove outdoor lighting as soon as the season is over; even these lights are not designed to withstand prolonged exposure to the elements.

When you leave the house or retire for the evening, be sure that all lights are turned off by unplugging them from the wall outlet. Always disconnect any electrical appliance by grasping the plug, not by pulling on the cord.

Finally, though it may provide a sense of nostalgia, never use wax candles on or near a tree. This is a very serious fire hazard. Any decorative candles should always be kept well away from children and any flammable material.

**TREE ORNAMENTS AND TRIMMINGS.** Avoid placing breakable ornaments or ornaments with small detachable parts on lower branches where small children or pets can reach them and knock them off. Every year many children are treated for cuts from broken ornaments or for swallowing ornament parts.

Trimnings used on trees or around the home should be non-combustible or flame resistant. An often unrecognized hazard exists in the use of spun glass "angel hair" and spray-on artificial snow, both non-flammable if used alone. When the snow is sprayed on angel hair, the dried combination burns rapidly if accidentally ignited.

Some traditional holiday decorations may be harmful if eaten and this poses a hazard for young children. Mistletoe and holly berries may be poisonous if more than a few are swallowed, and these plants should be kept out of the reach of children.

Use only tinsel or artificial icicles that do not contain lead. Discard old tinsel if you aren't sure of its composition.

Fire salts, which produce a multi-colored effect when thrown on a wood fire, contain heavy metals. Eating them can cause gastrointestinal problems and vomiting.

If your child consumes any of these possibly hazardous substances, call your physician or Poison Control Center immediately.

**FIREPLACES.** Fireplaces are particularly popular during the holidays. Before starting a fire, remove all decorations from the area and be sure the flue is open.

Keep a screen in front of the fireplace any time a fire is burning.

Never use the fireplace as an incinerator. Do not burn wrappings or evergreen boughs there. These can burn suddenly and rapidly, throwing off sparks and burning debris. Dispose of wrapping paper immediately.

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"Put Fire Prevention on Your Christmas List," Changing Times, December 1972.

Tryon, George H. Christmas Trees and Decorations. National Fire Protection Association, 1962.

October 1974



To report a product hazard or a product-related injury, write to the U. S. Consumer Product Safety Commission, Washington, D. C. 20542. In the continental United States, call the toll-free safety hot line, 800-438-2666. Maryland residents only, call 800-492-2937.

# AFFIDAVIT OF MAILING

STATE OF NEW YORK  
COUNTY OF KINGS  
EASTERN DISTRICT OF NEW YORK } ss

LYDIA FERNANDEZ

being duly sworn,

deposes and says that he is employed in the office of the United States Attorney for the Eastern District of New York.

That on the 28th day of November 19 75 he served <sup>two copies</sup> ~~copy~~ of the within

## JOINT APPENDIX

by placing the same in a properly postpaid franked envelope addressed to:

Aberman, Greene & Locker, Esqs.

540 Madison Avenue

New York, N. Y.

and deponent further says that he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Court House, <sup>225 Cadman Plaza East</sup> ~~Washington Street~~, Borough of Brooklyn, County of Kings, City of New York.

*Lydia Fernandez*  
LYDIA FERNANDEZ

Sworn to before me this

28th day of November 19 75

*John B. Cohen (Seal)*